

United States

Circuit Court of Appeals

For the Ninth Circuit.

7

VACUUM OIL COMPANY, PROPRIETARY, LTD., a Corporation,  
Appellant,

vs.

H. W. WESTPHAL, D. VON DER MEHDEN, HENRY FRISCHE,  
CHAS. NONNEMANN, HENRY WELLMAN, LILLY BRUCK-  
MANN, C. ZEUTHEN, CARL VON DER MEHDEN, ROBT. F.  
ELDER, C. F. LURMANN, BETTY VON CLEVE, THUS-  
NELDA WILKENS, CLARA OLIVER, F. B. KLOPPER,  
LOUISE SCHNABEL, SANDERS & KIRCHMANN, INC., a  
Corporation, and SCHOONER OWNERS COMPANY, a Cor-  
poration, Owners of the American Schooner, "COMMERCE,"  
Appellees.

Apostles on Appeal.

Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

FILED

OCT 26 1921

F. D. MONCKTON,  
CLERK



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the District Court of  
the United States in and for the Northern  
District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COM-  
PANY, a Corporation, D. VON der MEH-  
DEN, HENRY FRISCHE, CHAS. NON-  
NENMANN, HENRY WELLMAN, LILLY  
BRUCKMANN, C. ZEUTHEN, CARL  
VON der MEHDEN, ROBT. F. ELDER,  
C. F. LURMANN, BETTY VON CLEVE,  
TILLMAN & BENDEL, a Corporation,  
CLARA OLIVER, F. B. KLOPPER,  
LOUISE SCHNABEL, SANDERS &  
KIRCHMANN, INC., a Corporation, and  
SCHOONER OWNERS COMPANY, a  
Corporation, Owners of the American  
Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Praecepta for Apostles on Appeal.**

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause  
to be filed in the office of the clerk of the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit, upon the appeal heretofore perfected in this  
court and include in said transcript the following:

(1) All those papers, documents and data re-

quired by Subparagraph (1) of Section 1 of Rule 4 of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

(2) All the pleadings in the cause with the exhibits annexed thereto. [1\*]

(3) All the testimony and other proofs adduced in the cause, including the testimony taken at the trial, all depositions taken by either party and admitted in evidence, including the matter appended to the deposition of Charles Anderson, being all that certain matter appearing on pages 19 and 20, inclusive, of the typewritten transcript of said deposition; and all exhibits introduced by either party, said exhibits to be sent up as original exhibits.

(4) All opinions of the Court, whether on interlocutory questions or finally deciding the cause.

(5) The final decree.

(6) The notice of appeal.

(7) The assignments of error.

(8) All stipulations and orders extending time for printing the record and filing and docketing the cause on appeal.

PILLSBURY, MADISON & SUTRO,  
Proctors for Respondent.

[Endorsed]: Filed Sep. 16, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

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\*Page-number appearing at foot of page of original certified Apostles on Appeal.

In the Southern Division of the District Court of  
the United States for the Northern District of  
California, First Division.

No. 16,701.

SAN MATEO REALTY & SECURITY COM-  
PANY, a Corporation, et al.,

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,

Respondent.

**Statement of Clerk U. S. District Court.**

**PARTIES.**

Libelants: San Mateo Realty & Security Company,  
a Corp., D. Von der Mehden, Henry Frische,  
Charles Nonnenmann, Henry Wellman, Lilly  
Bruckmann, C. Zeuthen, Carl Von der Mehden,  
Robert F. Elder, C. F. Lurmam, Betty Von  
Cleve, Tillman & Bendel, Clara Oliver, F. H.  
Klopper, Louise Schnabel, Sanders & Kirch-  
mann, Inc., a Corp., and Schooner Owners  
Company, a Corp., Owners of the American  
Schooner "Commerce."

Substituted Libelants: H. W. Westphal (substi-  
tuted for San Mateo Realty & Security Com-  
pany, a Corp.); Thusnelda Wilkens (substi-  
tuted for Tillman and Bendel, a Corp.).

Respondent: Vacuum Oil Company, Proprietary,  
Ltd. [3]

PROCTORS.

For Libelants: WILLIAM DENMAN, Esq., San Francisco, California.

For Respondent: Messrs. PILLSBURY, MADISON & SUTRO, San Francisco, Cal.

PROCEEDINGS.

1919.

October 22. Filed libel on charter-party.

Issued citation for appearance of respondent, which was filed on return October 28, 1919, with the following return of the U. S. Marshal endorsed thereon:

“I have served this writ personally, by copy on C. A. Blumer, Agent of Vacuum Oil Co., Proprietary, Ltd., at San Francisco, California, Ser. at 1:30 P. M., this 22d day of Oct., A. D. 1919.

JAS. P. HOLOHAN,

U. S. Marshal,

By Thos. F. Mulhall,

Deputy Marshal.”

28. Filed citation on return.

30. Filed appearance of respondent.

December 4. Filed exceptions to libel.

6. Hearing was this day had on the exceptions to libel, Hon. Frank H. Rudkin, Judge, presiding. Ordered exceptions overruled, except the exceptions to notice which were sustained. [4]



- December 11. Filed amended libel.  
16. Filed exceptions to amended libel.  
1920.
- January 31. Hearing upon exceptions to amended libel, Hon. Frank H. Rudkin, Judge, presiding. After hearing counsel, it was ordered that the exceptions be withdrawn.
- February 2. Filed amendment to amended libel.  
7. Filed answer of respondent.
- November 19. Filed deposition of A. Beattie, a witness on behalf of libelant.  
Filed deposition of Charles Anderson, a witness on behalf of libelant.
- 1921.
- March 1. Filed deposition of Henry Kirschman, Jr., a witness on behalf of libelant.
- April 21. Hearing was this day had, Honorable JEREMIAH NETERER, Judge, presiding.  
22. Hearing was this day resumed. Cause submitted.
- June 11. Filed opinion in which it was ordered that a decree be entered in favor of libelants.  
13. Filed reporter's transcript.  
21. Filed final decree.
- September 16. Filed notice of appeal.  
Filed assignment of errors.

Filed bond on appeal in the aggregate sum of \$25,250, with American Surety Company of N. Y., as surety. [5]

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In the Southern Division of the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

SAN MATEO R. & S. CO., D. VON der MEHDEN, HENRY FRISCHE, CHAS. NONNENMANN, HENRY WELLMAN, LILLY BRUCKMANN, C. ZEUTHEN, CARL VON der MEHDEN, ROBT. F. ELDER, C. F. LURMANN, BETTY VON CLEVE, TILLMAN & BENDEL, CLARA OLIVER, F. H. KLOPPER, LOUISE SCHNABEL, SANDERS & KIRCHMANN, INC., and SCHOONER OWNERS CO., Owners of the American Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Libel on Charter-party.**

To the District Court of the United States, for the Northern District of California, in Admiralty:

The libel of the above-named libelants in a cause of contract, civil and maritime, alleges as follows:

I.

That on or about the 19th day of November, 1918, libelants were the owners of the American schooner "Commerce" and have been the said owners at all times since; that on or about said day, the libelants and respondent entered into a certain charter-party for the charter of the said American schooner "Commerce," a copy whereof is hereunto annexed and hereby made a part hereof; that thereafter, the said vessel did arrive at the port of San Francisco and did berth at the loading dock designated by respondent and was there ready to load many days before the expiration of the 110 days described in the said charter-party, and that after being so ready to load, and before the expiration of said 110 days, the libelants did give notice of the readiness to load to the respondent; that thereafter, the respondent, without any cause therefor, did notify libelants that it cancelled the said charter, and declined to perform the conditions and agreements thereof. [6]

II.

That respondent is, and at all times herein referred to has been, a corporation duly organized and existing under the laws of one of the states of the United States.

III.

That libelants have, at all times, performed all the conditions and agreements in the said charter-party agreed by them to be performed up to the time of the said notice of cancellation of the said charter-party, but that respondent has failed and

refused to and declared that it will not perform its agreement to furnish the cargo agreed upon in the said charter-party, and has failed and refuses to perform any of the conditions and agreements by it agreed upon in the said charter-party.

IV.

That by reason of the said refusal the libelants have been damaged in the amount of \$30,000.00, and upwards, no part of which has been paid to libelants.

V.

That all and singular the premises are true, and within the jurisdiction of this Honorable Court.

WHEREFORE, libelants pray that process in due form according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against respondent, and that it may be compelled to appear and answer, upon oath, all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree payment for the damages aforesaid, with costs, and that libelants may have such other and further relief as they may be entitled to receive.

WILLIAM DENMAN,  
Proctor for Libelants. [7]

State of California,  
City and County of San Francisco.—ss.

Henry Kirchmann, being first duly sworn, deposes and says:

That he is an officer of Sanders & Kirchmann, Inc., to wit, the ——— thereof, one of the libelants

herein; that as such officer he is duly authorized to make this verification for and on its behalf; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

HENRY KIRCHMAN.

Subscribed and sworn to before me, this 22d day of October, 1919.

[Seal] KATHRYN E. STONE,  
Notary Public, in and for the City and County of  
San Francisco, State of California. [8]

[Endorsed]: Filed Oct. 22, 1919. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [9]

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In the United States District Court, in and for the  
Southern Division of the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO R. & S. CO., D. VON der MEHDEN,  
HENRY FRISCHE, CHAS. NONNEN-  
MANN, HENRY WELLMAN, LILLY  
BRUCKMANN, C. ZEUTHEN, CARL  
VON der MEHDEN, ROBT. F. ELDER,  
C. F. LURMANN, BETTY VON CLEVE,  
TILLMAN & BENDEL, CLARA OLIVER,  
F. H. KLOPPER, LOUISE SCHNABEL,

SANDERS & KIRCHMANN, INC., and  
SCHOONER OWNERS CO., Owners of the  
American Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,

Respondent.

**Exceptions to Libel.**

To the Honorable M. T. DOOLING, Judge of the  
Southern Division of the United States District  
Court, for the Northern District of California,  
First Division:

The exceptions of Vacuum Oil Co., Proprietary,  
Ltd., a corporation, respondent above named, to the  
libel herein, allege as follows:

I.

That said libel does not state facts sufficient to  
constitute a cause of action.

II.

That said libel is insufficient and indefinite in  
that:

(a) That it cannot be ascertained therefrom  
whether [10] San Mateo R. & S. Co., Tillmann  
& Bendel, Sanders & Kirchmann, Inc., and  
Schooner Owners Co., are or either of them is a cor-  
poration.

(b) That it cannot be ascertained therefrom  
when the schooner "Commerce" arrived at the port  
of San Francisco, as alleged in Article I thereof.

(c) That it cannot be ascertained therefrom how  
often the schooner "Commerce" arrived at the port

of San Francisco subsequent to the 19th day of November, 1918.

(d) That it cannot be ascertained therefrom at what loading dock the schooner "Commerce" did berth, as alleged in Article I thereof.

(e) That it cannot be ascertained therefrom when said schooner "Commerce" became ready to load, as alleged in Article I thereof.

(f) That it cannot be ascertained therefrom when 110 days, described in said charter-party, expired, as alleged in Article I thereof.

(g) That it cannot be ascertained therefrom when libelants gave notice to respondent of the readiness to load, as alleged in Article I thereof.

(h) That it cannot be ascertained therefrom where said notice was given.

(i) That it cannot be ascertained therefrom to whom said notice was given.

(j) That it cannot be ascertained therefrom whether said notice was given to an officer or agent of respondent.

(k) That it cannot be ascertained therefrom to what officer or agent of respondent said notice was given.

(l) That it cannot be ascertained therefrom whether said notice was in writing or verbal. [11]

(m) That it cannot be ascertained therefrom how said notice was given.

(n) That it cannot be ascertained therefrom how libelants have performed all the conditions and agreements in said charter-party, as alleged in Article III thereof.

(o) That it cannot be ascertained therefrom whether the said schooner "Commerce" was tight, staunch, strong and in every way fitted for the voyage described in the charter-party, mentioned in said libel, including proper dunnage.

(p) That it cannot be ascertained therefrom how libelants have been damaged, as alleged in Article IV thereof.

(q) That it cannot be ascertained therefrom how many cases of petroleum products constitute a full cargo for said vessel.

(r) That it cannot be ascertained therefrom how much sawn lumber or barrel goods constitute a full on deck cargo for said vessel.

WHEREFORE, respondent prays that it be hence dismissed with its costs.

Dated: December 4, 1919.

PILLSBURY, MADISON & SUTRO,  
Proctors for Respondent Vacuum Oil Co., Proprietary, Ltd., a Corporation.

Received copy of the within exceptions to libel this 4th day of December, 1919.

WILLIAM DENMAN,  
Proctor for Libellant.

[Endorsed]: Filed Dec. 4, 1919. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [12]



At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the City and County of San Francisco, State of California, on Saturday, the sixth day of December, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable FRANK H. RUDKIN, Judge.

No. 16,701.

SAN MATEO R. & S. CO. et al.

vs.

VACUUM OIL CO.

**(Order Overruling Exceptions to Libel, in Part.)**

This cause came on regularly this day for hearing on exceptions to libel filed herein. After hearing the respective proctors herein, the Court ordered that said exceptions be overruled except the exceptions to notice, which is hereby sustained. [13]



In the Southern Division of the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

SAN MATEO REALTY & SECURITY COMPANY, a Corporation, D. VON der MEHDEN, HENRY FRISCHE, CHAS. NONNEMANN, HENRY WELLMAN, LILLY

BRUCKMANN, C. ZEUTHEN, CARL VON der MEHDEN, ROBT F. ELDER, C. F. LURMANN, BETTY VON CLEVE, TILLMANN & BENDEL, a Corporation, CLARA OLIVER, F. B. KLOPPER, LOUISE SCHNABEL, SANDERS & KIRCHMANN, INC., a Corporation, and SCHOONER OWNERS COMPANY, a Corporation, Owners of the American Schooner, "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Amended Libel on Charter-party.**

To Honorable M. T. DOOLING, Judge of the United States District Court for the Northern District of California:

Now come the libelants above named and pursuant to an order of court made herein file this their amended libel in a cause of contract, civil and maritime, and allege as follows:

I.

That San Mateo Realty & Security Company, one of the libelants above named, is a corporation duly organized and existing under and by virtue of the laws of California, with its principal place of business situate in the City and County of San Francisco, State of California; that Tillman & Bendel, one of the libelants above named, is a corporation duly organized and existing under and by virtue of

the laws of California, with its principal place of business situate in the City and County of San Francisco, State of California; that Sanders & Kirchmann, Inc., one of the libelants above named, is a corporation duly organized and existing under and by virtue of the laws of California, with its principal place of [14] business situate in the City and County of San Francisco, State of California; that Schooner Owners Company, one of the libelants above named, is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business situate in the City and County of San Francisco, State of California.

II.

That respondent is, and at all times herein referred to has been, a corporation duly organized and existing under the laws of the states of the United States.

III.

That on or about the 19th day of November, 1918, libelants were the owners of the American schooner "Commerce" and have been the said owners at all times since; that on or about said day, the libelants and respondent entered into a certain charter-party for the charter of the said American schooner "Commerce," a copy whereof is hereunto annexed and hereby made a part hereof; that hereafter, the said vessel did arrive at the Port of San Francisco and did berth at the loading dock designated by respondent and was there ready to load many days before the expiration of the one hundred ten (110)

days described in the said charter-party; that on or about the 16th day of September, 1919, and before the expiration of the said one hundred ten (110) days, at the City and County of San Francisco, State of California, the libelants, in accordance with the provisions of said charter-party, did give verbal notice to the respondent of the readiness to load of said American schooner "Commerce," that thereafter, the respondent, without any cause therefor, did notify libelants that it cancelled the said charter, and declined to perform the conditions and agreements thereof.

## IV.

That libelants have, at all times, performed all the conditions and agreements in the said charter-party agreed by them to be performed [15] up to the time of the said notice of cancellation of the said charter-party, but that respondent has failed and refuses to and declared that it will not perform its agreements to furnish the cargo agreed upon in the said charter-party, and has failed and refuses to perform any of the conditions and agreements by it agreed upon in the said charter-party.

## V.

That by reason of the said refusal, the libelants have been damaged in the amount of \$30,000.00, and upwards, no part of which has been paid to libelants.

## VI.

That all and singular the premises are true, and within the jurisdiction of this Honorable Court.

WHEREFORE, libelants pray that process in due form according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against respondent, and that it may be compelled to appear and answer, upon oath, all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree payment for the damages aforesaid, with costs, and that libelants may have such other and further relief as they may be entitled to receive.

WILLIAM DENMAN,

Proctor for Libelants. [16]

State of California,

City and County of San Francisco,—ss.

Henry Kirchmann, being first duly sworn, deposes and says:

That he is an officer of Sanders & Kirchmann, Inc., a corporation, to wit, the secretary thereof, one of the libelants herein; that as such officer he is duly authorized to make this verification for and on its behalf.

That he has read the foregoing amended libel and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

HENRY KIRCHMANN.

Subscribed and sworn to before me, this 11th day of December, 1919.

[Seal]

KATHRYN E. STONE,

Notary Public, in and for the City and County of San Francisco, State of California. [17]

Receipt of a copy of the within amended libel is hereby admitted this 11th day of December, 1919.

PILLSBURY, MADISON & SUTRO,  
Attorneys for Respondent.

[Endorsed]: Filed Dec. 11, 1919. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [18]

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In the United States District Court, in and for the  
Southern Division of the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO R. & S. CO., D. VON der MEH-  
DEN, HENRY FRISCHE, CHAS. NON-  
NENMANN, HENRY WELLMAN, LILLY  
BRUCKMANN, C. ZEUTHEN, CARL VON  
der MEHDEN, ROBT. F. ELDER, C. F.  
LURMANN, BETTY VON CLEVE, TILL-  
MANN & BENDEL, CLARA OLIVER, F.  
H. KLOPPER, LOUISE SCHNABEL,  
SANDERS & KIRCHMANN, INC., and  
SCHOONER OWNERS CO., Owners of the  
American Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Exceptions to Amended Libel.**

To the Honorable M. T. DOOLING, Judge of the Southern Division of the United States District Court, for the Northern District of California, First Division:

The exceptions of Vacuum Oil Co., Proprietary, Ltd., a corporation, respondent above named, to the amended libel herein, allege as follows:

I.

That respondent excepted to the original libel on file herein for the following grounds among others:

“That said libel is insufficient and indefinite in that . . . .

(g) That it cannot be ascertained therefrom when libelants gave notice to respondent of the readiness to load, as alleged in Article 1 thereof. [19]

(h) That it cannot be ascertained therefrom where said notice was given.

(i) That it cannot be ascertained therefrom to whom said notice was given.

(j) That it cannot be ascertained therefrom whether said notice was given to an officer or agent of respondent.

(k) That it cannot be ascertained therefrom to what officer or agent of respondent said notice was given.

(m) That it cannot be ascertained therefrom how said notice was given.”

That said exceptions were sustained by the above-entitled court on the 6th day of December, 1919.

That in said amended libel no effort has been made to make the same sufficient or definite in said particulars, but that the same is as to said matters identical with the original libel on file herein.

II.

That said libel does not state facts sufficient to constitute a cause of action.

III.

That said libel is insufficient and indefinite in that:

(a) That it cannot be ascertained therefrom when the schooner "Commerce" arrived at the port of San Francisco, as alleged in article III thereof.

(b) That it cannot be ascertained therefrom how often the schooner "Commerce" arrived at the port of San Francisco subsequent to the 19th day of November, 1918.

(c) That it cannot be ascertained therefrom at what loading dock the schooner "Commerce" did berth, as alleged in [20] Article III thereof.

(d) That it cannot be ascertained therefrom when said schooner "Commerce" became ready to load, as alleged in Article III thereof.

(e) That it cannot be ascertained therefrom when 110 days, described in said charter-party, expired, as alleged in Article III thereof.

(f) That it cannot be ascertained therefrom how libelants have performed all the conditions and agreements in said charter-party, as alleged in Article IV thereof.

(g) That it cannot be ascertained therefrom whether the said schooner "Commerce" was tight,



staunch, strong and in every way fitted for the voyage described in the charter-party, mentioned in said libel, including proper dunnage.

(h) That it cannot be ascertained therefrom how libelants have been damaged, as alleged in Article V thereof.

(i) That it cannot be ascertained therefrom how many cases of petroleum products constitute a full cargo for said vessel.

(j) That it cannot be ascertained therefrom how many cases of petroleum products constitute a full on deck cargo for said vessel.

WHEREFORE, respondent prays that it be hence dismissed with its costs.

Dated: December 16, 1919.

PILLSBURY, MADISON & SUTRO,  
Proctors for Respondent.

Received copy of the within exceptions to amended libel this 16th day of December, 1919.

WILLIAM DENMAN,  
Proctor for Libellants.

[Endorsed]: Filed Dec. 16, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [21]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Saturday, the thirty-first day of January, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable FRANK H. RUDKIN, Judge.

No. 16,701.

SAN MATEO R. & S. CO.

vs.

VACUUM OIL CO etc.

**(Order for Withdrawal of Exceptions to Amended Libel.)**

This cause came on regularly this day for hearing on exceptions to amended libel. After hearing counsel herein, the Court ordered that exceptions be withdrawn. [22]

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In the United States District Court, in and for the Southern Division of the Northern District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO R. & S. CO. et al.,

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,

Respondent.

**Amendment to Amended Libel.**

NOW COME the libelants above named, by William Denman, Esq., their proctor, and by leave of Court first had and obtained, amend their amended libel on file herein, by inserting in paragraph III of said amended libel the following, to wit:

“at said loading dock and”

after the word “day” and before the word “at,” in line 20, on page 2 of said amended libel.

Dated: January 31st, 1920.

WILLIAM DENMAN,  
Proctor for Libelants.

[Endorsed]: Filed Feb. 2, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [23]

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In the Southern Division of the District Court of the  
United States, in and for the Northern District  
of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COM-  
PANY, a Corporation, D. VON der MEH-  
DEN HENRY FRISCHE, CHAS, NON-  
NENMANN, HENRY WELLMAN, LILLY  
BRUCKMANN, C. ZEUTHEN, CARL VON  
der MEHDEN, ROBT. F. ELDER, C. F.  
LURMAN, BETTY VON CLEVE, TILL-  
MANN & BENDEL, a Corporation, CLARA  
OLIVER, F. B. KLOPPER, LOUISE

SCHNABEL, SANDERS & KIRCHMANN,  
INC., a Corporation, and SCHOONER  
OWNERS COMPANY, a Corporation, Own-  
ers of the American Schooner, "COM-  
MERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Answer.**

To the Honorable MAURICE T. DOOLING, Judge  
of the Southern Division of the District Court  
of the United States, in and for the Northern  
District of California, First Division:

The answer of the Vacuum Oil Co., Proprietary,  
Ltd., to the amended libel as amended again January  
31, 1920, admits, denies and alleges as follows:

I.

With respect to the averments of Article I of said  
libel, respondent for want of knowledge denies that  
the libelants therein mentioned are corporations, or  
that any of them is a corporation.

II.

With respect to the averments of Article II of  
said [24] libel, respondent admits that it is and  
has been a corporation, and denies that it ever has  
been organized or existing under the laws of one of  
the States of the United States, and in this behalf  
alleges that it is, and at all times in said libel re-  
ferred to has been organized and existing under the  
laws of the Commonwealth of Australia.

## III.

With respect to the allegations of Article III of said libel, respondent for want of knowledge denies that libelants were the owners of the schooner "Commerce" on or about the 19th day of November, 1918, or at any time, and that they had been the owners at all or any time since. Further answering said article, respondent admits that libelants and respondent entered into the charter-party therein referred to; admits that said vessel did arrive at the Port of San Francisco, and did berth at a loading dock, but for want of knowledge denies that said vessel was there ready to load many, or any, days before the expiration of the 110 days described in said charter-party. Further answering said article, respondent denies that on or about the 16th day of September, 1919, or before the expiration of said 110 days, or at any time, at said loading dock, or at the City and County of San Francisco, State of California, or at any place, libelants in accordance with the provisions of said charter-party, or otherwise, did give verbal or other notice to respondent of the readiness to load of said schooner. Further answering said article, respondent denies that respondent, without any cause therefor, did notify libelants that it cancelled the said charter, or declined to perform the conditions and agreements thereof, and in this behalf respondent alleges that on the 11th day of [25] October, 1919, respondent delivered to libelants a written communication, a copy whereof is hereunto annexed and marked Exhibit "A," and hereby referred to and made a part hereof the same

as if herein set forth at length; that all the statements made in said communication are true; that respondent never notified libelants that it cancelled said charter, or declined to perform the conditions or agreements thereof, except as set forth in said notice.

#### IV.

With respect to averments of Article IV of said libel, respondent denies that libelants have at all or any times performed all or any of the conditions or agreements in the said charter-party agreed by them to be performed up to the time of the said notice of cancellation of the said charter-party, or up to any time, and denies that respondent has failed or refused to, or declared that it will not perform its agreements to furnish the cargo agreed upon in the said charter-party, except as set forth in said notice, and denies that respondent has failed or refused to perform any of the conditions and agreements agreed by it upon in the said charter-party.

#### V.

With respect to averments of Article V of said libel, respondent denies that by reason of the said refusal, or of any cause, the libelants have been damaged in the amount of \$30,000 or upwards, or any sum.

WHEREFORE, respondent prays that it be hence dismissed with its costs.

PILLSBURY, MADISON & SUTRO.

Proctors for Respondent. [26]

State of California,  
City and County of San Francisco,—ss.

C. A. Blumer, being first duly sworn, deposes and says:

That he is the agent of Vacuum Oil Co., Proprietary, Ltd., the respondent named in the foregoing answer, and makes this verification on behalf of said respondent, because said respondent is a corporation, organized under the laws of the Commonwealth of Australia, and has no officer in the State of California, or there present; that he has personal knowledge of the facts stated in said answer; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

C. A. BLUMER.

Subscribed and sworn to before me this 7th day of February, 1920.

[Seal] W. H. PYBURN,  
Notary Public in and for the City and County of  
San Francisco, State of California. [27]

**Exhibit "A."**

C. A. BLUMER,  
Room 741,  
Mills Building.

San Francisco, October 11th, 1919.

Sanders & Kirchmann, Inc.,  
212 American National Bank Bldg.,  
San Francisco, California.

Gentlemen:

Schooner "COMMERCE."

As this vessel has not given notice of readiness to load to the undersigned, and as the 110th day since the vessel sailed from Suva, a South Sea Island Port, expired on October 6th, 1919, the undersigned hereby gives you this notice that it hereby exercises its option to cancel and hereby cancels the Charter covered by charter-party dated the 19th of November, 1918, between yourselves and the undersigned.

Yours truly,

VACUUM OIL COMPANY, PTY., LTD.

By C. A. BLUMER,

Agent.

CAB/J.

Receipt of a copy of the within answer is hereby acknowledged this 7th day of February, 1920.

WILLIAM DENMAN,

Proctor for Libelants.

[Endorsed]: Filed Feb. 7, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [28]



At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Thursday, the twenty-first day of April, in the year of our Lord, one thousand nine hundred and twenty-one. Present: The Honorable JEREMIAH NETERER, Judge.

No. 16,701.

SAN MATEO REALTY & SEC. CO., etc.,

vs.

VACUUM OIL CO., etc.

**Minutes of Court—April 21, 1921—Trial.**

This cause came on regularly this day for hearing of issues. E. B. McClanahan, Esq., was present as proctor for and on behalf of libelant. Alfred Sutro, Esq., was present as proctor for and on behalf of respondent. Mr. McClanahan made statement to the Court as to the nature of the cause, and called A. E. Wolff and Henry Kirchman, Jr., each of whom was duly sworn as a witness on behalf of libelant, and introduced in evidence certain exhibits, which were filed and marked Libelant's Exhibits Nos. 1 and 14 (Charter-party), 2 to 13, inclusive (letters). After hearing respective proctors, the Court ordered that the further hearing of this cause be, and the same is hereby continued to April 22, 1921, at 2 o'clock P. M. [29]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the court room thereof, in the City and County of San Francisco, State of California, on Friday, the twenty-second day of April, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable JEREMIAH NETERER, Judge.

No. 16,701.

SAN MATEO REALTY & SECURITY COMPANY, etc.,

vs.

VACUUM OIL CO., etc.

**Minutes of Court—April 22, 1921—Trial (Continued).**

This cause came on regularly this day for further hearing of the issues. E. B. McClanahan, Esq., was present as proctor for and on behalf of libelant. Alfred Sutro, Esq., was present as proctor for and on behalf of respondent. Henry Kirchmann resumed the stand and was further examined. Mr. McClanahan introduced in evidence the depositions of Alexander Beattie and Charles Anderson, and also introduced in evidence certain exhibits, which were filed and marked Libelant's Exhibits 15 (letter), 16 (letter, etc.), 17 (bills of lading), 18 and 19 (typewritten memo), and thereupon rested cause of libelant. Mr. Sutro called A. D. Jones, C. M. Connolly, C. A. Blumer, John B. Blair and R. N.

Singerland, each of whom was duly sworn as a witness on behalf of respondent, and examined, and introduced in evidence certain exhibits which were filed and marked Respondent's Exhibits "A," "B," "C," "D," "E," "F," "G" (letters), "H" (telegram), "I," "J," "K" (letters), and "L" (stipulation), and thereupon rested cause on behalf of respondent. Mr. McClanahan recalled in rebuttal A. E. Wolff and Henry Kirchman, who were further examined. After hearing proctors for respective parties, the Court ordered cause submitted on briefs to be filed in 5 and 5 and 3 days. [30]

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In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,701.

Before Hon. JEREMIAH NETERER, Judge.

SAN MATEO REALTY CO.,

Libelant,

vs.

VACUUM OIL CO., P'TY, LTD.,

Respondent.

**(Testimony Taken in Open Court.)**

THURSDAY, APRIL 21, 1921.

Counsel Appearing:

For the Libelant: Messrs. McCLANAHAN &  
DERBY, Represented by Mr. McCLANAHAN,  
For the Respondent: ALFRED SUTRO, Esq.

OPENING STATEMENT FOR THE LIBEL-  
ANT.

Mr. McCLANAHAN.—If the Court please, this is an admiralty proceeding for damages for breach of charter-party in the failure of the charterer to provide for the chartered vessel a cargo under the charter-party.

We propose to show that the charter in question was negotiated for through the Standard Oil Company, representing the charterer. The negotiations were concluded here, we propose to show, and the charter made out and forwarded East, I believe to New York, I believe for the signature of the respondent, who is the charterer, the Vacuum Oil Company.

The charter was dated November 18, 1918, and was sent on [31] in its concluded form as the result of the negotiations, to New York, there signed, and returned here. It was a charter for a cargo of case oil, and lumber on deck, the case oil being in the hold.

I wish to state briefly, for the Court's assistance, the relative provisions of the charter-party.

The owner engages, first, to furnish the vessel, a vessel named the "Commerce," a sailing vessel, a schooner.

The first clause of the charter-party provides for an engagement by the charterer to provide and furnish a cargo for that vessel, a cargo of case oil, or petroleum products, as that particular clause reads, and lumber on deck.

The second clause provides for the charter rate.

The next relevant clause is the fourth, and it provides, among other things, that no goods are to be laden on board the "Commerce" except from the charterer, or from charterer's agents.

The next clause provides that there shall be designated by the charterer, or by the charterer's agents, the loading berth for the vessel.

The next relevant clause provides that the lay-days are to commence when the vessel is ready to receive cargo.

The next relevant clause provides that the loading lay-days are to commence when the vessel is ready to load.

And then it goes on to say, in this particular clause, that the vessel has 110 days in sailing from a South Sea Island port to reach San Francisco, and there give notice; that is to say, she has 110 days before the charterer has the right to cancel the charter; and if she exceeds the 110 days, the charterer has the right to cancel the charter; if and when he decides to do so, it must be done when the notice of readiness is given.

Right here I will say that that is the only specific

reference in [32] the charter-party to this notice of readiness to receive cargo—in that particular clause, the cancellation clause of the charter-party.

The next clause provides that the cargo shall be received and delivered alongside at loading berth within reach of the vessel's tackles.

The next relevant clause provides that the vessel's stevedores are, for the loading and the discharging, to be appointed by the master.

We intend to prove that the vessel left a South Sea Island port, Levuka, the city or town of Levuka, in the Fiji Islands, on the 16th, or on the 19th of June, I believe it is. Have we a stipulation on that?

Mr. SUTRO.—The 19th of June.

Mr. McCLANAHAN.—That she left Levuka on the 19th of June, 1919, for San Francisco, for this port; that she arrived here some time in August and was immediately after discharging her inward cargo placed in dry-dock for repairs, and that during the period after her arrival here, numerous inquiries were made by the Standard Oil Company, through Mr. Slingerland, who was the agent of the Standard Oil Company, who negotiated the charter for the Vacuum Oil Company—numerous inquiries, I say, were made by him as to when the vessel would be ready for loading. That finally the vessel was ready for loading, and on the 16th of September, 1919, she having already been advised of the designated loading berth by Mr. Slingerland, or the Standard Oil Company, as being Port Orient, a loading point on this Bay, I think, under the con-

trol of the Standard Oil Company; the vessel proceeded to that designated loading point on the 16th day of September, and having arrived there was berthed under the direction of the [33] agents of the Standard Oil Company there present, and gave notice—verbal notice—of her readiness to receive cargo.

We expect to prove that, as a matter of fact, she was ready to receive cargo.

We expect to prove that this notice of readiness to receive cargo was also given to another employee of the Standard Oil Company, at Point Orient, a man named Jones, who is the reputed superintendent of the Standard Oil Company's business at Point Orient.

We expect to prove that on the same day, in the city of San Francisco, verbal notice of the vessel's having been sent to Point Orient, and of her readiness to receive cargo, was also given to a man named Blumer, who since the making of the charter-party appears upon the scene as an agent—the local agent of the Vacuum Oil Company.

We intend to prove that the vessel waited there for her cargo at Point Orient, and received no cargo, although it was known that that was the point where the cargo was to be received, where it actually was, though it was not received or designated to the vessel at all.

It was on the 16th of September that the vessel first went there and gave this notice of her readiness; she waited there, and on the 11th of October received from this man Blumer, who pur-

ported to be the agent of the Vacuum Oil Company, the charterer, a notice of cancellation of the charter for failure on the part of the owner to give notice of readiness to load.

We expect to prove that after the making of this charter there was a very radical and an alarming falling off in charter rates, and that after we had received the notice of cancellation, we approached the agent of the respondent, the Vacuum Oil Company, with offers to allow him to assist us in minimizing our [34] damages and securing another cargo. That as the result of negotiations, we finally did secure another charter from the Vacuum Oil Company at the then prevailing charter rates, which were a great many per cent lower than the charter rates which were attempted to be cancelled.

I think that is our case, and I will call as the first witness—

Mr. SUTRO.—Are you claiming for your damages the difference between the charter rates?

Mr. McCLANAHAN.—We claim as damages the difference between the charter of November 19, 1918, the first charter negotiated with the Standard Oil Company, and the charter which we later secured from the same charterer, on the 1st of November, 1919.

We will prove that the rate on November 1, 1919, was the then going market rate, and the highest rate at which we could charter our vessel.

The charter which we made as the second charter-party which the same charter was for the identical



class of goods, for the identical voyage, and the charter in all respects reads as the first charter-party which was attempted to be cancelled reads.

I will first call Mr. Wolff.

**Testimony of A. E. Wolff, for Libelant.**

A. E. WOLFF, called for the libelant, sworn.

Mr. McCLANAHAN.—Q. Mr. Wolff, you are a resident of San Francisco, are you?     A. Yes, sir.

Q. What is your business?

A. Importer and exporter.

Q. How long have you been engaged in that business?     A. About eighteen years.

Q. Have you had any experience in the matter of charters? [35]

A. Yes, sir.

Q. What has been your experience in that line?

A. In Pacific Ocean chartering practically during the last 12 or 14 years, almost continuously.

Q. What class of charters have you principally negotiated?

A. Full cargoes, both steamer and sailing vessel, including lumber, and copra, and case oil.

Q. Have you had any dealings, during your business experience, with the firm of Sanders & Kirchmann, Inc.?     A. Yes, sir.

Q. That is a corporation here doing a shipping business, with Australia and South Sea Island ports, largely?

A. They are ship owners.

Q. And they are owners of various sailing vessels?     A. They are the agents for owners.

(Testimony of A. E. Wolff.)

Q. Agents for owners of various sailing vessels?

A. Yes, sir.

Q. You are not interested in Sanders & Kirchmann, are you? A. Not at all.

Q. How long have you done business with them as a broker in the chartering of their vessels?

A. Sometimes as broker and sometimes as charter, for the last six or seven years.

Q. Were you, in the month of November, in the year 1918, familiar with the charter rates for schooners, sailing vessels, in cargo lots, between this port and the South Sea Islands and Australia?

A. Yes, sir.

Q. In that month and in that year, did you negotiate a charter with anyone for Sanders & Kirchmann as the managing owners?

A. Yes, several.

Q. Do you know the schooner "Commerce"?

A. I do.

Q. Did you negotiate a charter for that vessel during that month for that corporation?

A. I did.

Q. With whom did you conduct your negotiations for that charter? [36]

A. The Standard Oil Company, Mr. Slingerland.

Q. Who is Mr. Slingerland, with reference to the Standard Oil Company?

A. I think his title at that time was Assistant Traffic Manager; I am not entirely sure, but I think that was the title.

(Testimony of A. E. Wolff.)

Q. At that time, had you had any business with Mr. Slingerland—I mean, before that?

A. Yes.

Q. In what line of business?

A. A similar line, chartering.

Q. Had you at that time made charters for Sanders & Kirchmann with Mr. Slingerland?

A. Yes, sir.

Q. Who did Mr. Slingerland act for?

A. For the Vacuum Oil Company.

Q. Were all of the negotiations for this charter of the “Commerce” at this time made with Mr. Slingerland?

A. Yes, sir, they were made with Mr. Slingerland.

Q. Tell the history of the making of that charter, please.

A. I would talk to Mr. Slingerland, either in his office or on change, as to his requirements, and as to what the company wanted, and he expressed a desire to get the Sanders & Kirchmann ships at that time, because there was pretty keen competition for them; we gave him the ships to work on—I think we gave the refusal in writing, if I remember, in a letter addressed to the Standard Oil Company, and Mr. Slingerland wired or cabled the offer, and later on accepted the offer, either by signing a copy of our letter or by writing us a letter.

Q. What do you mean by giving Mr. Slingerland the ships to work on?

(Testimony of A. E. Wolff.)

A. By giving him a firm offer of the ships. I am not entirely sure, but I think we gave him a firm offer, or we indicated that we would receive a firm offer from him; I think we gave him a firm offer. Later on, when the charters were drawn, [37] as is customary, on the Vacuum Oil Company's blanks, signed by the owners here in accordance with the terms of the negotiations, and then sent on to New York for signature.

Q. Were these firm offers, which were either given by him or given by you, such as contained all of the terms of the charter?

A. Yes, sir.

Q. The principal terms?

A. The principal terms.

Q. And upon acceptance of the firm offer, the charter was then made out, as I understand you?

A. Yes, sir.

Q. And signed here first?

A. Signed by the owners here first, and by the Vacuum Oil Company's agent in New York.

Mr. SUTRO.—Just a moment. I have not objected to this line of examination at all, but it seems to me it is going a little too far. The only charter before the Court is the charter that is mentioned in the pleadings. The execution of that charter is admitted. I don't see the value of all of this historical data; it is unnecessarily prolonging the examination of the witness.

(Testimony of A. E. Wolff.)

Mr. McCLANAHAN.—Is there any particular question that you object to?

Mr. SUTRO.—Yes, I object to this as immaterial, irrelevant and incompetent, and that the charter speaks for itself.

Mr. McCLANAHAN.—To what question do you object?

Mr. SUTRO.—You asked him how it was made, and he said it was signed by the owners. As a matter of fact, it was not signed by the owners, it is signed by Sanders & Kirchmann.

The COURT.—If the execution is admitted, I think that is all that is necessary.

Mr. SUTRO.—Yes, that is all that is necessary.

Mr. McCLANAHAN.—But the question has been answered, your Honor. [38]

The COURT.—The answer may stand.

Mr. McCLANAHAN.—Q. Mr. Wolff, can you identify the document which I now hand you?

A. Yes, sir.

Q. What is it?

A. That is the charter for the schooner "Commerce," negotiated November 19, 1918.

Q. That is the charter that you have been speaking of as having been negotiated by you?

A. Yes, sir.

The COURT.—Is that to be introduced in evidence as an exhibit?

Mr. McCLANAHAN.—Yes, your Honor.

The COURT.—I suppose it will be marked Exhibit 1.

(Testimony of A. E. Wolff.)

Mr. SUTRO.—I have not seen it yet.

Mr McCLANAHAN.—Here it is. We offer the charter identified by the witness in evidence, and ask that it be marked Libelant's Exhibit 1.

The COURT.—All right, let it be admitted.

(The document was here marked Libelant's Exhibit 1.)

Mr. McCLANAHAN.—Q. At the time of the execution of this charter, was the schooner "Commerce" at this port?

A. I could not say.

Q. Do you know of the voyage that brought her to this port, prior to her readiness to enter upon the charter in question?

A. Yes, sir.

Q. From what port did she sail on that voyage?

A. She sailed from Levuka, Fiji Islands.

Q. Do you know of her arrival at this port on that voyage?

A. Not from memory; I would have to refresh my memory on it.

Q. I say, you know the fact that she did arrive?

A. Yes, sir.

Q. Do you know what she did after she arrived?

A. She discharged the inward cargo, which was to my firm, and then she went to the shipyards for repairs. [39]

Q. After her arrival here, and prior to her readiness to undertake the charter in question, did you have any conversation or communication, oral or

(Testimony of A. E. Wolff.)

otherwise, with Mr. Slingerland, with reference to the schooner "Commerce"?

A. Yes, I was seeing Mr. Slingerland every day, or every few days at the outside during that period, usually on 'Change, and sometimes talking over the phone with him; he was asking us right along when the "Commerce" would be ready, what was doing on her.

Q. Ready for what?

A. Ready to go up to load under the case oil charter.

Q. Do you know who designated the loading port for the "Commerce" under this charter?

A. I don't know. That would be handled by Sanders & Kirchmann.

Mr. SUTRO.—Q. You say you don't know?

A. No.

Mr. McCLANAHAN.—He has answered the question. Why are you stopping him?

Mr. SUTRO.—If your Honor will just hear that whole answer, you will see. He says: "No, that would be handled by so and so"; that part of the answer is not responsive. I had this witness before, your Honor, and not so very long ago, either, and he is very—

Mr. McCLANAHAN.—Now, Mr. Sutro, that is highly improper.

The COURT.—Proceed.

Mr. McCLANAHAN.—Q. Did you know the berth that was designated for the loading?

(Testimony of A. E. Wolff.)

A. Yes, sir.

Q. Where? A. Port Orient.

Q. Where is port Orient?

A. In the upper part of San Francisco Bay.

Q. What is it?

A. It is the loading place at which the Standard Oil Company ships most of their case oil cargo offshore [40]

Q. Had you had other vessels that you had negotiated the charters for ship from that point?

A. Yes, sir.

Q. Do you know the date that the vessel proceeded to that designated point of loading?

A. September 16, 1919.

Q. What other ports or points are there where case oil is furnished vessels by the Standard Oil Company for Vacuum Oil shipments?

A. Point Orient is the usual point. At times I think they have lightened it down to San Francisco wharves, or Oakland wharves; once, many years ago, they delivered it to us at Oakland Long Wharf, and I think once at Point San Pablo.

Q. When this charter was negotiated, did you know who was to be the furnisher of the cargo for the vessel? A. Yes, sir.

Q. Who? A. The Standard Oil Company.

Q. I understand that this was one of a number of charters similar to this that you negotiated with the Standard Oil Company? A. Yes, sir.

Q. Who in each case was the furnisher of the cargo? A. The Standard Oil Company.



(Testimony of A. E. Wolff.)

Q. When this charter was originally and first broached and the negotiations were first commenced, did you know then that it was ultimately to be a charter for the Vacuum Oil Company?

A. Yes, sir.

Q. At the time of the negotiations for this charter, and the making of the charter, did the Vacuum Oil Company, to your knowledge, have any other agent, other than the Standard Oil Company, here in San Francisco?

A. Not to my knowledge.

Q. Did you ever deal with any other agent than the Standard Oil Company?      A. No, sir.

Q. What was the prevailing market rate for lumber in cargo lots on sailing vessels in November, 1918, from this port to Auckland, as a discharging port, and/or Wellington, and/or Lyttleton, and/or [41] Dunedin, Australia, with the option of one port to the charter?

A. You mean at the time this charter was negotiated, do you, in November, 1918?

Q. Yes, in November, 1918.

A. The prevailing rate for the deck cargo of lumber, taken on the deck of the schooner carrying case oil, for future loading, was \$27.50.

Q. Per thousand feet?

A. Per thousand feet.

Q. Board measure?      A. Board measure.

Q. And what was the prevailing market rate for case oil to be loaded below deck?

A. \$1.375 per case.

(Testimony of A. E. Wolff.)

Q. So that the charter rates were the prevailing market rates? A. Yes, sir.

Q. Do you know, Mr. Wolff, the prevailing market rate for lumber on charters of that character in November, 1919, one year after?

A. During the whole of those three months—I don't know that I could say November specifically, I think the last charter I had knowledge of was probably in October; about \$15 per thousand feet, in October, 1919.

Q. For lumber? A. For lumber, yes.

Q. And what was the prevailing market rate for case oil? A. 70 cents.

Q. 70 cents? A. Yes, at that same time.

Q. Did you have anything to do with the second charter of the "Commerce"? A. No, sir.

Q. Between the consummation of the charter of November 19, 1918, with the Standard Oil Company, for the Vacuum Oil Company, and the 16th of September, 1919, what was the condition of the freight market?

A. It was downward, very sharply downward.

Q. Had that condition developed suddenly, or was it a gradual condition?

A. It was the outcome of the shipping situation [42] after the armistice; it came on slowly at first, but got very rapid later on.

Mr. McCLANAHAN.—You may take the witness.

(Testimony of A. E. Wolff.)

Cross-examination.

Mr. SUTRO.—Q. Mr. Wolff, your talks and your negotiations with Mr. Slingerland were, I understand, so far as you are concerned, as the representative of Sanders & Kirchmann, Inc.?

A. As a broker.

Q. As a broker of Sanders & Kirchmann, you were representing them, were you not?

A. I presume so, but that question didn't enter my mind.

Q. Well, it does now, as I ask it?      A. Yes.

Q. You say that you made an offer to Mr. Slingerland of this charter; the offer was made by you to Mr. Slingerland for the Vacuum Oil Company, wasn't it?

A. It was made to the Standard Oil Company for submission by them to the Vacuum Oil Company.

Q. Didn't you say your dealings were with Mr. Slingerland?      A. Yes, sir.

Q. You had no dealings with anyone else connected with the Standard Oil Company, did you?

A. No, but our letters were addressed—

Q. I didn't ask you that: I asked you did you have any dealings with anybody else except Mr. Slingerland?

A. At times; sometimes I talked with Mr. Slingerland's assistant, and once with his superior, Mr. Casad.

Q. Did you have any communications with any-

(Testimony of A. E. Wolff.)

body else other than Mr. Slingerland concerning this charter?

A. I could not say concerning this charter; at one time I did, when Mr. Slingerland was away.

Q. I am not asking you about other times, I am asking you about this charter.

A. I could not say positively. [43]

Q. Very well, if you cannot answer, that's all right. You say that Mr. Slingerland, in response to your offer of this charter to him, accepted the same in writing; Is that correct?

A. It is my memory that he accepted it in writing, either at the foot of one of our own letters, a duplicate, or on a letter which he wrote us; I would have to look up our records to be sure.

Q. You so testified on your direct examination, didn't you? I made a note of it. Did you so testify on your direct examination?

A. The record will show.

Q. What is your memory of your own examination?

A. My memory is I said I was not sure whether Mr. Slingerland had written us separately or had accepted on a duplicate of our letter.

Q. Your answer now is that in response to your offer you don't know whether Mr. Slingerland wrote you a letter, or whether he accepted it on a duplicate of your letter; that is your answer, is it?

A. Yes.

Mr. McCLANAHAN.—And that is my recollection of his testimony.

(Testimony of A. E. Wolff.)

Mr. SUTRO.—Very well, that is what I am asking him.

Q. Is that right?     A. Yes, sir.

Q. And in writing to you, Mr. Slingerland was writing to you as the broker of Sanders & Kirchmann, Inc.?     A. Yes, sir.

Q. You say that Mr. Slingerland was asking you right along when she would be ready, or when she would go to Point Orient, or what?

A. I don't know that he mentioned Point Orient, particularly. He was asking us when she would be ready to load her case oil.

Q. You say he was "asking us": Did he ask you?

A. He asked me, yes.

Q. He asked you?     A. Yes, sir. [44]

Q. Had you told him that she was on the dry-dock?

A. I could not say whether I stated that; I could not say that positively.

Q. Do you recall how long before she went to Point Orient, as you testify, on September 16th, Mr. Slingerland asked you when she would be ready to take her case oil?

A. The discussion of that was more or less intermittent over a period of, I should say, two or three weeks.

Q. Do you know when she got here?

A. My memory is it was some time in August; I am not sure of the date.

Q. And he kept on asking you this up to the time

(Testimony of A. E. Wolff.)

that she went up to Point Orient on September 16th: Is that right?

A. Up to within a day or two of that time, when he gave orders.

Q. When he gave orders?

A. Well, when the Standard Oil Company gave orders.

Q. Now, first, let us get this right. It was up to within two or three days of September 16th that he kept asking you when she would be ready to take her case oil?

A. That is my approximate memory.

Q. Until he, or the Standard Oil Company, gave orders? A. Yes.

Q. Did he give you any orders?

A. Not to me; no, sir.

Q. Did the Standard Oil Company give you any orders? A. Not to me.

Q. Do you know when Mr. Slingerland gave any orders? A. I don't know whether he gave orders.

Q. Do you know whether anybody connected with the Standard Oil Company gave any orders?

A. I don't know, myself.

Q. Then why do you say that he kept on repeating until he or the Standard Oil Company gave orders?

A. Because when they were advised that the vessel was ready to go up, orders were given to the office—not to me—by the Standard Oil Company, and the office ordered the vessel towed up. That is why I said that. [45]

(Testimony of A. E. Wolff.)

Q. I just asked you a moment ago if you knew whether or not anybody connected with the Standard Oil Company gave any orders, and you said no, and now you state that somebody connected with the Standard Oil Company gave the office order.

A. Was that your question I don't recall it that way.

Mr. McCLANAHAN.—Do you deny that the Standard Oil Company gave the order?

Mr. SUTRO.—Now, Mr. McClanahan, I didn't interrupt your examination, and I don't care to have you interrupt mine. As I told you before, I have had experience with this witness.

Mr. McCLANAHAN.—That is very improper, Mr. Sutro.

Mr. SUTRO.—I know you say that, but the Court can judge for itself.

The COURT.—Proceed.

Mr. SUTRO.—Q. Did Mr. Slingerland give you any orders? A. No, sir.

Q. Did the Standard Oil Company give you or your concern any orders?

A. Not my concern; no, sir.

Q. To whom did it give any orders?

A. To Sanders & Kirchmann, the agents for the vessel.

Q. Were they written or verbal?

A. As far as I know, verbal.

Q. Who gave those orders?

A. I do not know.

Q. You don't know? A. No, sir.

(Testimony of A. E. Wolff.)

Q. To whom were they given?

A. I don't know that.

Q. Then how do you know any orders were given?

A. From the office procedure.

Q. What is that procedure?

A. A vessel, when she is chartered to load at one of two places, has to find out from the charterer where she is to go to lift the cargo; when she is ready, or nearly ready, the office procedure is to confer with the charterer's [46] representative and say that the vessel will be ready to go up on such and such a day; the charterer will then say, "I want to load her at such and such a place." Usually that is done verbally; sometimes over the telephone, sometimes by one man, sometimes by another. When the orders are given, the captain is notified by the office and told that when he is ready to go up he is to pick up a towboat—to find out if the berth is clear and then be towed up. That is the procedure. And we know, inasmuch as the vessel was towed up there, that orders were given.

Q. You know from prior procedure, do you, that orders were given in this case?

A. I am assuming from the procedure that orders were given in this case, otherwise the vessel would not have known where to go.

Q. Your conclusion is that unless orders had been given, the vessel would not know where to go: Is that it? A. That is it, in part.

Q. What office do you refer to, when you refer to "office procedure"?



(Testimony of A. E. Wolff.)

A. The procedure in the office of Sanders & Kirchmann, the owners of the vessel.

Q. Sanders & Kirchmann, Inc.? A. Yes, sir.

Q. You were familiar with the procedure in that office? A. Yes, sir.

Q. And you saw what was going on with relation to this vessel, didn't you? A. In part.

Q. In part?

A. Yes, in part; not altogether.

Q. Not altogether. Well, that is a cautious answer. Now, you testified that you knew that the berth this vessel was to go to was designated; who designated the berth? A. That I don't know.

Q. Then you don't know that the berth was designated?

Mr. McCLANAHAN.—That is a matter he has been testifying [47] about, and I submit—

Mr. SUTRO.—Now, never mind, Mr. McClanahan.

A. Mr. Sutro, I think—

Mr. SUTRO.—Q. I ask you the question now, you don't know that the berth was designated, do you?

Mr. McCLANAHAN.—I object to that, because it is the very matter the witness and counsel went through just immediately preceding this.

The COURT.—I thought he had given you what he knew about it. You may answer it again.

Mr. SUTRO.—Very well, if your Honor is satisfied with that.

The COURT.—I thought he gave you what he

(Testimony of A. E. Wolff.)

knew about it. He said he gave you what he knew about it—at least I have that in mind.

Mr. SUTRO.—He said that on his direct examination.

The COURT.—No, on yours. He gave you the procedure, what he knew about it.

Mr. SUTRO.—Q. As I understand your testimony now, it is that you don't know that the berth was designated, except by the inference you draw from the fact that she went up there: Is that right?

A. As far as my personal knowledge goes, yes.

Mr. SUTRO.—That is all.

Mr. McCLANAHAN.—No further questions.

### **Testimony of Henry Kirchmann Jr., for Libelant.**

HENRY KIRCHMANN, Jr., called for the libelant, sworn.

Mr. McCLANAHAN.—Q. Your name is Henry Kirchmann?

A. Henry Kirchmann, Jr.

Q. You are an officer in Sanders & Kirchmann, Inc., are you? A. I am.

Q. And they are the managing owners of the schooner "Commerce"? [48] A. They are.

Q. And were the managing owners in November, 1918? A. They were.

Q. Who were the owners of the schooner "Commerce" in November, 1918?

Mr. SUTRO.—I object to that as not a competent question. The best evidence of who the owners were is the record at the customs-house.

(Testimony of Henry Kirchmann, Jr.)

The COURT.—Is this one of the owners?

Mr. McCLANAHAN.—Yes, your Honor.

The COURT.—If he is one of the owners, he may testify.

Mr. McCLANAHAN.—He is one of the officers of the corporation. I never heard before that you could not use verbal evidence to establish the ownership of a chattel.

Mr. SUTRO.—It is very much like the question of title to real estate, your Honor.

The COURT.—Well, is there any question about it? Is the question of title in issue? Is there any dispute about the title?

Mr. SUTRO.—I am not sure, your Honor. I understand there is some question about the title.

The COURT.—I will let him answer the question.

Mr. SUTRO.—I would like to ask him one or two questions preliminarily, or even two or three questions.

The COURT.—Proceed.

Mr. SUTRO.—Q. You say you are an officer of Sanders & Kirchmann, Inc.? A. Yes.

Q. What is your office? A. Vice-president.

Q. How long have you been vice-president?

A. For the last four or five years.

Q. Continuously? A. Continuously.

Mr. SUTRO.—All right.

The COURT.—You may answer who are the owners. [49]

A. Sanders & Kirchmann—

Mr. McCLANAHAN.—Q. Just let me interrupt

(Testimony of Henry Kirchmann, Jr.)

you: You are refreshing your memory, now, are you? A. Yes, sir.

Q. From what?

A. From a list of owners of the schooner "Commerce" as I received them from the customs-house, as of date November 19, 1918.

Q. And have you compared that list with the books of Sanders & Kirchmann, Inc., showing the owners of the "Commerce"? A. I have.

Q. Those books are in your office?

A. They are.

Q. And they do show the owners?

A. They do show the owners.

Q. The men to whom dividends are paid out of the earnings of the company? A. Yes, sir.

Mr. SUTRO.—If they are recited there, I will admit it.

Mr. McCLANAHAN.—Very well. We offer in evidence the certificate from the customs-house showing the owners. Later on in the case, if your Honor please, we propose to offer an amendment as to the owners, because the owners have changed; as your Honor knows, they change at one time and another.

(The document was here marked Libellant's Exhibit 2.)

Q. Do you know where the schooner "Commerce" sailed from on the voyage to this city, prior to undertaking the charter in question?

A. She sailed from Levuka, Fiji Islands, to San Francisco.

(Testimony of Henry Kirchmann, Jr.)

Q. When did she sail?

A. She sailed from Levuka about June 19th.

Q. And when did she get here?

A. She arrived in San Francisco on August 28th.

Q. Where did she go after arrival?

A. She discharged her inward cargo of copra, and then was placed on dry-dock for repair to be ready for this out-going voyage. [50]

Q. Do you know how long she was on dry-dock?

A. She was on dry-dock about two or three days. but there were other repairs which were done while she was in the water.

Q. Do you remember her going to the loading berth under this charter-party?

A. Yes, she went to the loading berth on September 16, 1919.

Q. Prior to her going to her loading berth, had you received a designation of that berth from anyone?

A. I had received a designation of the loading berth from the Standard Oil Company.

Q. What was the designation?

A. She was ordered to proceed to Point Orient, and load cargo.

Q. At what date was this order designating the loading berth?

A. It was either a day or two prior to her proceeding up there. The Standard Oil Company were phoning us from time to time, asking when the boat would be ready, and just prior to her going up

(Testimony of Henry Kirchmann, Jr.)

there they designated the berth where she was to proceed to, which was Point Orient.

Q. And she arrived at Point Orient, you say, on September 16th, 1919? A. Yes, sir.

Q. Do you know at that time whether she was ready to receive cargo, or not?

A. She was ready to receive cargo.

Q. Do you remember what may be designated as the second charter-party of the "Commerce," made with the Vacuum Oil Company, and dated November 1, 1919? A. I do.

Q. Between September 16, 1919, and the entering upon the second charter-party, was anything done to the schooner "Commerce" by way of making her ready to receive cargo?

A. Nothing was done, because she was ready on September 16th to receive cargo.

Q. And she remained in that condition until she was finally loaded under the second charter-party?

A. She did.

The COURT.—When was that done? Have you that date? [51]

Mr. McCLANAHAN.—When was that done?

The COURT.—The loading under the second charter.

Mr. McCLANAHAN.—Q. Do you know when she was loaded under the second charter-party? I have the bills of lading here, your Honor. November 15, 1919.

The WITNESS.—That is the date when loading was completed.

(Testimony of Henry Kirchmann, Jr.)

Q. What is that?

A. That would be the date when the loading was completed.

Q. Yes, that is the date of the bill of lading?

A. Yes.

Q. Did you, at the time of the making of the first charter-party, November 19, 1918, know of any other agent than the Standard Oil Company of the Vacuum Oil Company in San Francisco?

A. I did not.

Q. Subsequently to September 16, 1919, did you learn of any other agent?

A. I was not officially advised of any other agent, but there was a Mr. Blumer whom we understood was acting for the Vacuum Oil Company.

Q. A Mr. Blumer?     A. A Mr. Blumer.

Q. Do you remember having any dealings with Mr. Blumer connected with the schooner "Commerce" on the date of September 16, 1919?

A. I called at the office of Mr. Blumer in the forenoon of September 16, 1919, accompanied by the captain of the steamer "Luzon," Captain Beatty, another one of our vessels which had just loaded a cargo for the Standard Oil Company; we went there on business of the "Luzon," and on arriving at that office Mr. Blumer asked me how the "Commerce" was getting along, and I advised Mr. Blumer that the "Commerce" had towed up the river that morning, and that she either was at the loading port or was on the way up.

Q. What else was said, if anything?

(Testimony of Henry Kirchmann, Jr.)

A. I asked Mr. Blumer if there was any further notice necessary, and he said no. Then we proceeded with the business of the schooner "Luzon."  
[52]

Q. Prior to that conversation with Mr. Blumer, had you had any other conversation with him with reference to the "Commerce"?

A. Yes, I had met Mr. Blumer on 'Change, and he had asked how the "Commerce" was getting along; that was while she was repairing.

Q. After this conversation of September 16, 1919, with Mr. Blumer, did you have occasion to see Mr. Blumer again before he cancelled or attempted to cancel this charter-party?

A. No; between the time of September 16th and the date of the cancellation of the charter-party I did not see Mr. Blumer again.

Q. And had no communication with him?

A. Not during that time.

Q. Mr. Kirchmann, can you tell the Court the best of your recollection as to where, and when, and how, and by whom you were advised of Mr. Blumer's connection with the Vacuum Oil Company?

A. I was negotiating several charters at that time, a good *man* of them through Mr. Wolff, for shipping friends of mine, with the Standard Oil Company, and when I would call I would always call on Mr. Slingerland, and at times he would designate for me to go to somebody else; at one time he told me to see a Mr. Blumer in the Mills Building, and



(Testimony of Henry Kirchmann, Jr.)

so I went and saw Mr. Blumer in the Mills Building.

Q. Did you find his office there?

A. I found his office there. On the door was only the name C. A. Blumer.

Q. Did you from Mr. Slingerland learn at that time that he was representing the Vacuum Oil Company? A. I did not.

Mr. SUTRO.—Who do you mean? Learn that who was representing the Vacuum Oil Company?

Mr. McCLANAHAN.—Mr. Blumer.

Q. Do you know whether Mr. Blumer knew of the arrival of the “Commerce” in San Francisco on her inward voyage?

A. I do not know whether he knew of her arrival, but he knew that she was [53] there prior to the time that she proceeded up to Point Orient, because he would ask me at times how the “Commerce” was getting along.

Q. Do you know whether Mr. Slingerland knew of her arrival here on the inward voyage?

A. I do not know whether Mr. Slingerland knew of her arrival here, but I know that he knew she was here, because he would ask me how she was getting along.

Q. How did you receive the designation of the loading port under the charter-party?

A. The Standard Oil Company telephoned over the telephone to proceed to Point Orient to load.

Q. Do you know who it was who telephoned?

A. I do not know who it was that telephoned, but

(Testimony of Henry Kirchmann, Jr.)

we had that conversation with various officers of the Standard Oil Company from time to time.

Q. I believe you testified that that was a few days before September 16th.

A. It was a few days before September 16th.

Q. Was this the first dealing that you had had with the Standard Oil Company in which it represented as agent the Vacuum Oil Company?

A. No, we had many other charters made that way with the Standard Oil Company; in fact, I think we negotiated something like—we had over ten charter parties of our own with the Standard Oil Company, that is, the negotiations would be made with the Standard Oil Company, and the charter-party would be drawn in the name of the Vacuum Oil Company, and it would be necessary each time to have those charters forwarded to New York for signature.

Q. Was the procedure in the case of the "Commerce" different from the procedure in the case of other charters?

A. It was the same in every case, with the exception of the second charter, which took the place of the cancelled charter; in that case, the charter was signed here by Mr. Blumer. [54]

Q. Mr. Kirchmann, did your firm or corporation receive notice of the cancellation of the first charter from anyone?     A. Yes.

Q. Mr. Kirchmann, after this vessel had been repaired, do you know whether she was certified, or not?

(Testimony of Henry Kirchmann, Jr.)

A. She was certified by a surveyor from the San Francisco Board of Marine Underwriters.

Q. What did you do with that survey?

Mr. SUTRO.—If your Honor please, I think that is entirely immaterial. There is no question here about the vessel's seaworthiness; it is just encumbering the record.

The COURT.—If there is no question about it, then that might be taken as established.

Mr. McCLANAHAN.—Is there any question about the fitness of the vessel to receive this cargo?

Mr. SUTRO.—No, there is no question about it.

Mr. McCLANAHAN.—Then it is admitted that the vessel was fit to receive this cargo. Will you admit that you had notice of that fitness?

Mr. SUTRO.—We will admit there was a surveyor's certificate, certifying to the seaworthiness of the vessel.

Mr. McCLANAHAN.—That is not far enough, because this certificate is a certificate of her fitness to receive this cargo for this voyage, and we want an admission that that notice was received by the respondent.

Mr. SUTRO.—We will admit that there was a certificate from a surveyor that the vessel was in good condition throughout, and in every respect fit to carry dry and perishable cargo upon the voyage intended.

Mr. McCLANAHAN.—And that the intended voyage was the voyage under this charter-party?

Mr. SUTRO.—Yes.

(Testimony of Henry Kirchmann, Jr.)

Mr. McCLANAHAN.—And that you received notice of that fact? [55]

Mr. SUTRO.—And that we received notice of that fact, yes.

Mr. McCLANAHAN.—Q. I will ask you, Mr. Kirchmann, if you can recognize this document which I hand you?

A. Yes.

Mr. McCLANAHAN.—I will offer this in evidence, and ask that it be marked Libelant's Exhibit 3. I desire to read these letters into the record. It reads as follows:

**Libelant's Exhibit No. 3.**

(Letter-head of C. A. Blumer, Room 741 Mills Building.)

“San Francisco, October 11th, 1919.

Sanders & Kirchmann, Inc.,

212 American National Bank Bldg.,

San Francisco, California.

Gentlemen:

Schooner ‘COMMERCE.’

As this vessel has not given notice of readiness to load to the undersigned, and as the 110th day since the vessel sailed from Suva, a South Sea Island Port, expired on October 6th, 1919, the undersigned hereby gives you this notice that it hereby exercises its option to cancel and hereby cancels the Charter covered by Charter Party dated the 19th of Novem-

(Testimony of Henry Kirchmann, Jr.)

ber, 1918, between yourselves and the undersigned.

Yours truly,

VACUUM OIL COMPANY, PTY., LTD.

By C. A. BLUMER,

Agent.”

(The document was marked Libelant's Exhibit 3.)

Mr. McCLANAHAN.—Mr. Sutro, will you please produce the answer to that letter?

Mr. SUTRO.—Yes.

Mr. McCLANAHAN.—Q. Was there a reply made to that letter, Mr. Kirchmann?

A. A reply was made to that letter.

Q. By Sanders & Kirchmann?

A. By Sanders & Kirchmann.

Mr. SUTRO.—Let me see your copy.

Mr. McCLANAHAN.—It is admitted, if your Honor please, that [56] this was the answer. I will ask that it be marked Libelant's Exhibit 4. It is dated October 11, 1919.

Mr. SUTRO.—It may be more satisfactory to have the original; here is the original.

Mr. McCLANAHAN.—All right. I will read from the original just handed to me by counsel. It reads as follows:

(Testimony of Henry Kirchmann, Jr.)

**Libelant's Exhibit No. 4.**

(Letter-head of Sanders & Kirchmann, Inc., 212 to  
216 American National Bank Building.)

San Francisco, Cal., Oct. 11th, 1919.

Vacuum Oil Company, Pty., Ltd.,

C. A. Blumer, Agent,

Room 741 Mills Building,

San Francisco, Cal.

Dear Sirs:—

Schr. 'COMMERCE.'

We are puzzled to understand your letter of even date. It was evidently written under a misapprehension that you can require notice of readiness to be tendered to you in writing. The fact is that we notified you that the vessel was ready in berth—at the berth designated by you—almost immediately after her arrival there and long before the 110th day after she sailed from Suva. It seems evident that your letter was written under the misapprehension that the charter required us to give written notice.

Under the circumstances we cannot accept your notice of cancellation of the charter.

Yours truly,

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,  
Secretary."

(The letter was marked Libelant's Exhibit 4.)

Mr. SUTRO.—I would like to ask the witness a question.

Q. Is that the letter that Sanders & Kirchmann sent?

(Testimony of Henry Kirchmann, Jr.)

A. That is the letter Sanders & Kirchmann sent in reply to the letter that they received from Blumer.

Mr. McCLANAHAN.—Q. And did you get a reply to that letter? [57]

A. We received no reply to that letter that I recollect.

Q. Well, I hand you a document and ask you if you can refresh your recollection from it.

A. Yes.

Q. So you did receive a reply?

A. Yes, we did receive a reply.

Q. What is the document that I hand you?

A. This is a letter from C. A. Blumer, under date of October 14, 1919.

Q. Replying to yours of the 11th of October?

A. Replying to ours of the 11th of October.

Mr. McCLANAHAN.—I offer this in evidence and ask that it be marked Libelant's Exhibit 5. It is dated October 14, 1919. It reads as follows:

**Libelant's Exhibit No. 5.**

(Letter-head of C. A. Blumer.)

“San Francisco, October 14th, 1919.

Messrs. Sanders & Kirchmann, Inc.,

212 American National Bank Building,

San Francisco, Calif.

Dear Sirs:—

Schooner ‘COMMERCE.’

Your letter, dated the 11th inst., was evidently left at the office of the undersigned yesterday, a legal holiday.

(Testimony of Henry Kirchmann, Jr.)

Our letter of the 11th to you, cancelling the charter for this vessel, dated November 19, 1918, was not written under any misapprehension. We note that you say that,

‘The fact is that we notified you that the vessel was ready in berth—at the berth designated by you—almost immediately after her arrival there and long before the 110th day after she sailed from Suva.’

So far as the writer of this letter is concerned, he knows of no notice, either oral or written, that was given by you, or any one else, to the undersigned, or to anyone on its behalf, of the readiness of this vessel to load. Will you kindly let us know who, on your behalf, gave notice of readiness and on what date and to whom the same was given, and also let us have a copy of the [58] notice or of its contents.

Yours truly,

VACUUM OIL COMPANY, PTY., LTD.,

By C. A. BLUMER,

Agent.”

(The document was marked Libelant’s Exhibit 5.)

Q. Did you answer that letter?

A. Yes, that letter was also answered.

Q. Is that the answer to the letter just read, the letter which I now hand you? A. Yes, sir.

Mr. McCLANAHAN.—I offer this in evidence. It is on the letter-head of Sanders & Kirchmann, Inc. And dated October 15, 1919, and reads as follows: We ask that it be marked Libelant’s Exhibit 6.



(Testimony of Henry Kirchmann, Jr.)

**Libelant's Exhibit No. 6.**

(Letter-head of Sanders & Kirchmann, Inc.)

“San Francisco, Cal., Oct. 15th, 1919.

Vacuum Oil Company, Pty., Ltd.,  
C. A. Blumer, Agent,  
Room 741 Mills Building,  
San Francisco, Cal.

Dear Sir:

Schooner ‘COMMERCE.’

We acknowledge receipt of your letter of Oct. 14th. Immediately upon the vessel's arrival in berth, the Captain notified the man in charge, at designated dock, that the vessel had arrived and was ready to load and the man in charge came aboard, examined the holds and inspected the dunnage and found the vessel to be ready.

Yours truly,

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,

Secretary.”

(The document was marked Libelant's Exhibit 6.)

Q. Did you receive an answer to that letter?

A. I don't recollect.

Q. Just refresh your memory by looking at this.

A. Yes.

Mr. McCLANAHAN.—We offer in evidence the answer to the letter just read, and ask that it be marked Libelant's Exhibit [59] and it reads as follows:

(Testimony of Henry Kirchmann, Jr.)

**Libelant's Exhibit No. 7.**

(Letter-head of C. A. Blumer.)

“San Francisco, October 15th, 1919.

Sanders & Kirchmann, Inc.,

212 American National Bank Bldg.,

San Francisco, Calif.

Gentlemen:—

Schooner ‘COMMERCE.’

Your letter of today about the Schooner ‘Commerce’ is at hand. We do not understand to whom you refer as ‘the man in charge’ whom you state the Captain notified that the vessel had arrived and was ready to load. You give us neither date nor name.

We had no one at the berth you mention representing us or authorized to accept any notice for us, nor did anyone, so far as we know pretend to have accepted any notice from you, or from your Captain, on our behalf.

Yours truly,

VACUUM OIL COMPANY PTY., LTD.,

By C. A. BLUMER,

Agent.”

(The document was marked Libelant's Exhibit 7.)

Q. Was that letter answered, Mr: Kirchmann?

A. My recollection is that that was answered.

Q. Do you identify this document that I hand you as the answer to that letter? A. Yes, sir.

Mr. McCLANAHAN.—I offer in evidence the letter identified by the witness, and ask that it be marked Libelant's Exhibit 8. It is on the letter-

(Testimony of Henry Kirchmann, Jr.)

head of Sanders & Kirchmann, Inc., reading as follows:

**Libelant's Exhibit No. 8.**

“San Francisco, Cal., October 17th, 1919.

Mr. C. A. Blumer,  
Mills Building,  
San Francisco.

Dear Sir:

We are much puzzled by the stand that you have taken regarding your attempt to cancel the charter of the Schooner [60] ‘Commerce.’ Can you give us your positive assurance that you had no agent of the Vacuum Oil Company at Point Orient, at any time prior to the elapse of the 110 days? This may vitally affect the position we will take regarding the cancellation.

Yours very truly,  
SANDERS & KIRCHMANN, INC.  
By H. KIRCHMANN,  
Secretary.”

(The letter was marked Libelant's Exhibit 8.)

Q. Did you get a reply to that letter, Mr. Kirchmann?

A. I am not sure; there were so many letters.

Q. Can you refresh your memory from this?

A. Yes, sir.

Q. This is the reply? A. That is the reply.

Mr. McCLANAHAN.—We offer in evidence the original reply identified by the witness, and ask that it be marked Libelant's Exhibit 9. It reads as follows:

(Testimony of Henry Kirchmann, Jr.)

**Libelant's Exhibit No. 9.**

(Letter-head of C. A. Blumer.)

“San Francisco, October 18th, 1919.

Sanders & Kirchmann, Inc.,

212 American National Bank Bldg.,

San Francisco, California.

Gentlemen:—

Schooner ‘COMMERCE.’

Yours of yesterday concerning the Schooner ‘Commerce’ received as we were about to close our office for the day. We note that you do not give us any of the information for which we ask in our letter of the 15th.

For reply to your letter of yesterday we respectfully refer you to our letter of the 15th. We may add that we have, we think, clearly and definitely stated our position in the premises and we suggest that it is useless to continue this correspondence.

Yours truly,

VACUUM OIL COMPANY, PTY., LTD.,

By C. A. BLUMER,

Agent.”

(The document was marked Libelant's Exhibit 9.)

Q. Is it your recollection that that ended the correspondence [61] with reference to the cancellation? A. I think so; I do not think there were any more letters.

Q. Subsequently, Mr. Kirchmann, did you have anything to do with Mr. Blumer about re-chartering the schooner “Commerce”?

(Testimony of Henry Kirchmann, Jr.)

A. We had a meeting in Mr. Sutro's office with Mr. Kirchmann, Sr., and Mr. Blumer, and myself.

Q. Mr. Kirchmann, Sr., is your father?

A. He is my father.

Q. When was that meeting held?

A. That meeting was a day or two prior to the second charter.

Q. And if the second charter is dated November 1, 1919, it was a day or two prior to that?

A. It was a day or two prior to that.

Q. Was it at that meeting the second charter, of November 1, 1919, was negotiated and agreed upon?

A. At that meeting, we were asked if we would accept another charter at a little higher than the going rate, provided we would cancel our libel against the Vacuum Oil Company, which we declined to do, and we left the office. We tried hard to get a charter from the Vacuum Oil Company, but we did not succeed in doing so at the time. We advised Mr. Sutro and Mr. Blumer that the best charter we could get would be a lumber cargo to Melbourne, at a \$35 freight rate, from a Northern lumber port, which would make the difference in damages far greater than if we were given a case-oil charter. They refused to give us a charter at that time, and we left the office. As we were about to enter the elevator, Mr. Blumer came to us and said he would give us a charter at the going rate of freight. That is the outcome of the negotiation for the second charter.

(Testimony of Henry Kirchmann, Jr.)

Q. Prior to your leaving the office and being called back, had Mr. Blumer—

Mr. SUTRO.—I don't think he said he was called back. [62]

Mr. McCLANAHAN. — Q. (Continuing) — had Mr. Blumer made you an offer of any kind?

A. Yes, Mr. Blumer had made us an offer through Mr. Sutro of 75 cents per case if we would cancel our libel, and it was intimated to us at the time that they would even go a little higher if we would cancel our libel against the Vacuum Oil Company.

Q. What do you mean by cancelling your libel? Had the libel been filed at that time?

A. The libel had been filed at that time, yes.

Q. And you declined that 75-cent offer?

A. We declined that offer.

Q. I believe counsel corrected me; he said you were not called back to the office.

A. We were called back to the office.

Q. Were you familiar at that time with the current rate of freight in cargo lots between this port and Wellington, Auckland, Lyttleton, Dunedin, Australia? A. I was.

Q. What was the current rate for case oil stowed under deck?

A. The current rate for case oil stowed under deck was 70 cents a case.

Q. And what was the rate, in a charter carrying case oil and lumber, for the lumber carried on deck?

A. For lumber carried on deck, \$15, a thousand.

Q. Board measure? A. Board measure.

(Testimony of Henry Kirchmann, Jr.)

Mr. McCLANAHAN.—I call for the production of the original letter dated October 29, 1919, addressed to C. A. Blumer, and signed Sanders & Kirchmann, Inc., under the topic “Schooner ‘Commerce.’”

Mr. SUTRO.—Here it is.

Mr. McCLANAHAN.—Q. Mr. Kirchmann, I hand you this document which has just been produced by counsel—Mr. Sutro, it [63] was the letter of October 29th that I wanted. I may use this one later.

Mr. SUTRO.—I haven’t got the original. I will give you a copy. I thought that was the one I gave you. That is a copy of it, isn’t it? You have a copy there.

Mr. McCLANAHAN.—Yes, I am comparing them.

Q. I hand you a document and ask you if you can identify it; it is a copy. A. Yes.

Q. You have read that, have you?

A. I have read it.

Q. Does it refresh your memory about this offer?

A. It does.

Q. In what respect?

A. That Mr. Blumer made us an offer of 75 cents a case for the case oil on the schooner “Commerce,” and \$20 per thousand for the lumber, provided we would dismiss our libel standing against the Vacuum Oil Company.

Q. Was that offer made at the meeting?

A. No, this was made prior to the meeting.

(Testimony of Henry Kirchmann, Jr.)

Q. Prior to the meeting?

A. Prior to the meeting.

Q. I understood you to testify that the offer of 75 cents for the case oil was made at the meeting?

A. It was again made at the meeting.

Q. But it was made before that in writing, was it?

A. Yes, it was made before that.

Q. And this is the document?     A. Yes, sir.

Mr. McCLANAHAN.—You have examined this, Mr. Sutro?

Mr. SUTRO.—Yes; it comes from my possession.

Mr. McCLANAHAN.—We offer this in evidence and ask that it be marked Libelant's Exhibit 10. It reads as follows:

**Libelant's Exhibit No. 10.**

SANDERS & KIRCHMANN, INC.

San Francisco, Cal., Oct. 29th, 1919.

C. A. Blumer,

Agent, Vacuum Oil Co., Prop., Ltd.,

Mills Building,

San Francisco. [64]

Dear Sir:

Schooner 'COMMERCE.'

You offered, over the 'phone yesterday, to give us a cargo of case oil and lumber for our Schooner 'Commerce,' offering to pay 75¢ per case freight on the case oil and \$20.00 per M feet freight on the lumber, provided we would dismiss our libel suit against your Company. You stated that these rates



(Testimony of Henry Kirchmann, Jr.)

were well above present rates. Our reply was that we declined your offer.

We did, however, offer to accept the above rates without prejudice to any claim we had against you and not dismiss our libel suit.

It is our understanding that you had declined to accept our offer and this is to advise you, since you have refused to fulfill our charter with you and have further declined to offer us cargo for this vessel at current rates, without prejudice to our claim against you, that we are now going out in the open market to secure the best, possible business we can for this vessel, with the view to minimize our damages against you as much as possible.

Yours truly,

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,

Secretary."

(The document was marked Libelant's Exhibit 10.)

Q. And it was after the sending of that letter that this meeting occurred at which the charter was offered you at 70 cents and \$15 for the lumber, and you retained your rights under your suit?

A. Yes.

Mr. McCLANAHAN.—Will you produce the letter of October 31st, Mr. Sutro, the one you offered me a while ago and which, for the moment, I did not use?

Mr. SUTRO.—Yes.

(Testimony of Henry Kirchmann, Jr.)

Mr. McCLANAHAN.—Q. Can you identify the letter which I now hand you? A. Yes.

Q. What is it?

A. That is a letter written on October 31st to [65] C. A. Blumer, in reference to the schooner "Commerce."

Q. And in reference to the matter of the charter?

A. Yes.

Mr. McCLANAHAN.—I offer it in evidence and ask that it be marked Libelant's Exhibit 11. It reads as follows:

**Libelant's Exhibit No. 11.**

(Letter-head of Sanders & Kirchman, Inc.)

"San Francisco, Cal., Oct. 31st, 1919.

C. A. Blumer,

Agent for Vacuum Oil Co., Prop., Ltd.,

Mills Building,

San Francisco.

Dear Sir:

Schooner 'COMMERCE.'

As advised you in our favor of the 29th inst., we have gone into the market in an endeavor to secure the best, possible business for this vessel. We find that we are unable to secure a case oil cargo and the best business that we are able to secure is a cargo of redwood lumber, from Humboldt Bay to Melbourne, at \$42.50 per M feet, less 2½%, lump sum based on average fir capacity of 850,000 feet. Freight to be prepaid, but vessel to provide marine and war risk insurance covering prepaid freight.

In estimating the difference in freight earnings between this voyage and the case oil charter with yourselves, under date of November 19th, 1918, an allowance of at least sixty days additional must be given the vessel, on account of the longer voyage, also expense and loss of time moving from San Francisco to Humboldt Bay, additional time loading lumber cargo against case oil cargo, which also applies at the discharging end and the difference in cost of loading and discharging lumber as against case oil.

If you will refer to our letter of Oct. 29th you will note that we offered to accept your offer of 75¢ per case on case oil and \$20.00 per M feet on lumber, provided this would be done without prejudice to our claim against you for breach of charter and that we were not to dismiss our libel suit. It is our opinion [66] that your damages would be less if the vessel took such a cargo, in place of the lumber cargo, and we again repeat this offer to you, subject to your written acceptance prior to 3 P. M. this afternoon, and if you do not accept, this is to advise you that we will accept the redwood lumber charter above referred to, to Melbourne.

Yours truly,

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,

Secretary.”

(The document was marked Libelant's Exhibit 11.)

(Testimony of Henry Kirchmann, Jr.)

Q. Did you subsequently write to the agent of the Vacuum Oil Company with reference to this new charter? Look at that and refresh your memory. (Addressing counsel.) Mr. Sutro, will you please produce the letter of November 3d?

Mr. SUTRO.—Here it is.

A. Yes, we wrote this letter on November 3d.

Mr. McCLANAHAN.—We offer in evidence this letter identified by the witness, and ask that it be marked Libelant's Exhibit 12. It reads as follows:

**Libelant's Exhibit No. 12.**

(Letter-head of Sanders & Kirchmann, Inc.)

“San Francisco, Cal., Nov. 3rd, 1919.

C. A. Blumer,

Agent for Vacuum Oil Co., Prop., Ltd.,

Mills Building,

San Francisco.

Dear Sir:

Schooner ‘COMMERCE.’

In accordance with our agreement, we hand you herewith proposed charter of the Schooner ‘Commerce.’ It is understood that this charter and the rates and terms herein agreed upon are in no way in substitution of your charter of November 19th, 1918, on the said vessel between Vacuum Oil Company and ourselves, or in prejudice of our rights under and for breach of the same. Will you kindly confirm our understanding in this regard in writing?

In consideration of the execution by you of the new charter [67] and your confirmation of this

(Testimony of Henry Kirchmann, Jr.)

letter, we agree to modify your charter of the Schooner 'Philippine,' dated November 19th, 1918, by allowing you as an optional port of discharge, under said charter, the port of Timaru, New Zealand.

Yours truly,

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,  
Secretary."

(The document was marked Libelant's Exhibit 12.)

Q. This letter was written after the meeting in Mr. Sutro's office, at which the charter was negotiated finally? A. Yes, sir.

Q. Did Mr. Blumer, as the agent of the Vacuum Company, give you the assurance which you asked for in that letter in writing?

A. I do not recollect, but a charter was drawn up.

Q. Just look at this letter and refresh your recollection. A. Yes, sir.

Mr. McCLANAHAN.—We offer in evidence this letter just identified by the witness, and ask that it be marked Libelant's Exhibit 13. It reads as follows:

(Testimony of Henry Kirchmann, Jr.)

**Libelant's Exhibit No. 13.**

(Letter-head of C. A. Blumer.)

“San Francisco, November 4th, 1919.

Sanders & Kirchmann, Inc.,

212 American National Bank Bldg.,

San Francisco, Calif.

Gentlemen:—

Schooner ‘COMMERCE.’

We have yours of yesterday with proposed Charter of the ‘Commerce’ dated November 1st, 1919. The same is satisfactory and is not in substitution of the former Charter dated November 19th, 1918, and is without prejudice to any rights which you may have by reason of the alleged breach by us of the Charter of November 19th, 1918.

Yours truly,

VACUUM OIL COMPANY, PTY., LTD.

By C. A. BLUMER,

Agent.”

(The document was marked Libelant's Exhibit 13.) [68]

Q. Mr. Kirchmann, was the second charter entered into in writing?

A. The second charter was entered into in writing.

Q. And is this the second charter?

Mr. SUTRO.—I suppose this evidence is all offered, your Honor, upon the ground of reducing the damages. I suppose it could have been properly offered by us. I have not objected to it. Is that the theory of it, Mr. McClanahan?

(Testimony of Henry Kirchmann, Jr.)

Mr. McCLANAHAN.—It is the proof of our damage. You deny any damage.

Mr. SUTRO.—You are proving damages by proving the second charter. If that is your theory, all right.

Mr. McCLANAHAN.—Thank you.

The COURT.—Proceed.

Mr. McCLANAHAN.—We offer in evidence the charter-party identified by the witness, and dated November 1, 1919, between Sanders & Kirchmann, Inc., agents for owners of the American schooner “Commerce,” and C. A. Blumer, the agent of the Vacuum Oil Company, Pty., Ltd. We ask that it be marked Libelant’s Exhibit 14.

(The document was here marked Libelant’s Exhibit 14.)

Your Honor, I suggest an adjournment.

The COURT.—We will try and take this case up again to-morrow afternoon at 2:00 o’clock.

(The further hearing of the case was then continued until Friday, April 22, 1921, at two o’clock P. M.)

[Endorsed]: Filed Jun. 13, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [69]

FRIDAY, APRIL 22, 1921.

HENRY KIRCHMANN, Jr., direct examination (resumed).

Mr. McCLANAHAN.—If the Court please, counsel has called for the production of a letter which I did not know was in existence. I have produced

(Testimony of Henry Kirchmann, Jr.)

it. I would like to offer it in evidence as a part of the testimony of Mr. Wolff.

The COURT.—Is there any objection?

Mr. SUTRO.—No, there is no objection.

The COURT.—Let it go in.

Mr. SUTRO.—Is Mr. Wolff going to stay here? Is he going to be in attendance here? If he is, I would like to ask him some other questions. You will be in attendance, Mr. Wolff, will you?

Mr. WOLFF.—Yes.

Mr. McCLANAHAN.—I can make a statement of the contents of this letter, or—

Mr. SUTRO.—It can be copied into the record.

Mr. McCLANAHAN.—Yes. Mr. Wolff testified that he was in doubt as to whether the negotiations with Mr. Slingerland for the charter were presented by him in written form to Mr. Slingerland, or whether Mr. Slingerland presented it to him. This is a letter from Mr. Wolff's firm to Mr. Slingerland, of the Standard Oil Company, making the proposition. I did not know of the existence of it.

The COURT.—You may proceed.

Mr. McCLANAHAN.—It reads as follows:



**Libelant's Exhibit No. 15.**

(Letter-head of Wolff, Kirchmann & Co.)

“TRIPLICATE.

In Replying, Please

Refer to our File No. 100. [70]

November 19, 1918,

Standard Oil Co.,

Bush & Sansome Sts.,

San Francisco, Calif.

Attention Mr. Slingerland.

Gentlemen:

Schooners ‘LUZON’—‘COMMERCE’—‘SAMAR’—‘FORESTER’ AND ‘PHILIPPINE’  
LAST HALF 1919 LOADING:

We confirm having chartered to you, in accordance with conversation with Mr. Slingerland, the above vessels to load cargoes of petroleum products in cases under deck and full deckloads of lumber from San Francisco to Auckland, Wellington, Lyttleton or Dunedin at your option on the following terms:

RATES: Case oil \$1.37-1/2 per case; lumber \$27.50 per M. ft. B. M.

DATES: Laydays to commence when vessels are ready to load, cancelling one hundred and thirtieth day after sailing for San Francisco if direct from Sydney or a New Zealand port or one hundred and tenth day if direct from South Sea Island port.

ITINERARY: Vessels, after completion of discharge under their existing case oil charters, to proceed to this coast—with cargo or in ballast or via Sydney or port or ports in New Zealand or South

(Testimony of Henry Kirchmann, Jr.)

Sea Islands to San Francisco, there to load for you.

OTHER CHARTER CONDITIONS: Same as last charter of the Schooner 'COMMERCE' for case oil.

It is understood that this charter is subject to all Governmental restrictions and/or regulations.

We are writing this letter in quadruplicate. Please sign two copies and return to us together with sufficient blanks to enable us to have original charter parties drawn.

Yours very truly,  
WOLFF KIRCHMANN & CO.  
A. E. WOLFF,  
Manager.

AEW:EMC.

Charter confirmed.

STANDARD OIL COMPANY.  
By R. N. SLINGERLAND." [71]

(The letter was marked Libelant's Exhibit 15.)

The COURT.—Are you through, now?

Mr. McCLANAHAN.—I would prefer to introduce in evidence the surveyor's report of the fitness of the vessel. I got a stipulation as to it yesterday, but I would prefer the surveyor's report to be introduced.

The COURT.—Very well.

(The document was here marked Libelant's Exhibit 16.)

Mr. McCLANAHAN.—Q. Mr. Kirchmann, between the dates of September 16th, when the vessel reported at the Point Orient dock, and the 11th of

(Testimony of Henry Kirchmann, Jr.)

October, when you received the letter purporting to cancel the contract, had you received from Mr. Blumer, or from Mr. Slingerland, or from anyone else, any intimation of the stand to be taken on the question of notice?

Mr. SUTRO.—I object to it on the ground that it is perfectly immaterial whether they had, or not.

The COURT.—He may answer it.

A. No, sir.

Mr. McCLANAHAN.—Q. The letter of October 11th was your first intimation or notice of any exception to be taken to the notice given?

A. Yes, sir.

Q. Between those dates, was it your expectation that the charter-party would be carried out?

A. It was—

Mr. SUTRO.—Just a moment, please. I object to the question upon the ground that it calls for the mental operation of the witness, and on the ground that it is immaterial, irrelevant and incompetent testimony.

The COURT.—He being one of the owners, I think it is competent; it may go in.

Mr. SUTRO.—That he expected that she would fill the charter?

The COURT.—Yes, just what his mental attitude was. [72]

Mr. SUTRO.—I take an exception to the ruling.

Mr. McCLANAHAN.—Q. How many charter-parties were negotiated in the year 1918, between your company as managing owner, and the Standard

(Testimony of Henry Kirchmann, Jr.)

Oil Company, wherein the charters were for the Vacuum Oil Company?

Mr. SUTRO.—I don't know that that is a material question, your Honor, there is only one charter under discussion here.

The COURT.—He may answer the question.

A. There were ten charters.

Mr. McCLANAHAN.—Q. There were ten charters in that year? A. In that year, yes.

Q. Prior to the 11th of October, 1919, had any of those charter-parties, negotiated in the year 1918, been carried out?

Mr. SUTRO.—I object to the question on the ground that it is not material.

Mr. McCLANAHAN.—It is all on the question of the purported agency of the Standard Oil Company for the Vacuum Oil Company.

The COURT.—The objection to the question as it is propounded is sustained. Whether any exception was taken to the authority under any of them might be material and competent.

Mr. McCLANAHAN.—I do not quite catch what your Honor says.

The COURT.—Whether any exception was taken to the authority of the agent who entered into the charter-party, that might be competent.

Mr. McCLANAHAN.—My purpose is to show that all of the charters that were carried out between this company and the Standard Oil Company for the Vacuum Oil Company prior to October 11,

(Testimony of Henry Kirchmann, Jr.)

were carried out in the same method as was the charter in suit.

The COURT.—Yes; whether they were carried out, that perhaps [73] might not be material, other matters might enter into that; whether authority to enter into this charter for this respondent might be material. That is what you desire to develop, I assume?

Mr. McCLANAHAN.—Yes, it is. I will try to frame my question thus:

Q. Was there during all the time when you were dealing with the Standard Oil Company for the Vacuum Oil Company any question of the authority of that company to act for the Vacuum Oil Company? A. I don't understand that question.

Mr. McCLANAHAN.—Read the question, Mr. Reporter.

(Question read by the reporter.)

A. To our knowledge, no.

Q. Was any written notice of readiness given either the Standard Oil Company, or to Mr. Blumer, in regard to the second charter of the schooner "Commerce"?

Mr. SUTRO.—I object to that is not material or competent.

The COURT.—Sustained.

Mr. McCLANAHAN.—Save an exception.

Q. Who paid freight on the second charter-party?

A. The Standard Oil Company.

Q. Who received the commission called for by the charter-party, as far as you know?

(Testimony of Henry Kirchmann, Jr.)

A. The Standard Oil Company.

Q. After her arrival at the dock at Point Orient, on September 16, did the vessel leave that dock until or before she had received her case oil cargo under the second charter-party? A. She did.

Q. She did what?

A. She shifted from one wharf to another wharf.

Q. But she did not leave Point Orient?

A. She did not leave Point Orient; no, sir.

Q. When was the loading under the second charter-party commenced? [74]

Mr. SUTRO.—I object to that on the ground that it is entirely immaterial; it has nothing to do with this charter.

The COURT.—I don't think—

Mr. McCLANAHAN.—I think the Court asked that very question itself yesterday.

Mr. SUTRO.—No, I don't think so.

The COURT.—Wherein is it material? I just inquired as to the fact, and that is in now. Wherein is it material to the second one?

Mr. McCLANAHAN.—I think it is part of the *res gestae*, your Honor.

The COURT.—Very well, if you feel that way about it, put it in.

Mr. SUTRO.—Exception.

Mr. McCLANAHAN.—Q. Do you know the date of the commencement of the loading under the second charter-party?

Mr. SUTRO.—The same objection and exception.

The COURT.—Yes.

(Testimony of Henry Kirchmann, Jr.)

A. November 7th.

Mr. McCLANAHAN.—Q. Can you identify these documents, Mr. Kirchmann?

A. This is the bill of lading for the “Commerce.”

Q. Under the second charter-party?

A. Yes.

Mr. McCLANAHAN.—We offer these bills of lading in evidence.

The COURT.—All as one exhibit?

Mr. McCLANAHAN.—Yes, I think they may all go in as one exhibit.

The COURT.—Very well.

(The documents were here marked Libelant’s Exhibit 17.)

Mr. McCLANAHAN.—Q. Did you furnish the form for the bill of lading for the case oil that I have just introduced in evidence? [75]

A. No, sir.

Mr. SUTRO.—Wait a moment. The witness does not give me a chance to object. That is an immaterial matter, your Honor, whether he did, or not.

The COURT.—He has answered it; let it stand.

Mr. McCLANAHAN.—Q. Mr. Kirchmann, have you had prepared in your office since adjournment yesterday a statement showing the difference between the freight under the first charter-party and under the second? A. I did.

Q. And is this the statement?

A. That is the statement.

Mr. McCLANAHAN.—I will show it to counsel.

(Testimony of Henry Kirchmann, Jr.)

Mr. SUTRO.—That is a mere matter of arithmetical computation.

Mr. McCLANAHAN.—It is for the Court's convenience. We offer it in evidence.

Mr. SUTRO.—We are not conceding the correctness of it. It is simply a mathematical computation.

Mr. McCLANAHAN.—It is not simple.

Mr. SUTRO.—I am not casting any reflections on the ability of the person who made it up. I say it is merely a mathematical calculation.

Mr. McCLANAHAN.—Yes, it is made for the convenience of the Court.

Mr. SUTRO.—Will you give me a copy of it?

Mr. McCLANAHAN.—Yes, we will supply you a copy of it.

The COURT.—Let it be admitted.

(The document was marked Libellant's Exhibit 18.)

Mr. McCLANAHAN.—That is all.

#### Cross-examination.

Mr. SUTRO.—Q. Mr. Kirchmann, the office of Wolff, Kirchmann & Co., and of Sanders & Kirchmann, Inc., at the time of the [76] transactions concerning which you have testified, were in the same place, were they not?

A. They were adjoining offices on the same floor of the building.

Q. They were adjoining offices on the same floor of the American National Bank Building?

A. The American National Bank Building, yes.



(Testimony of Henry Kirchmann, Jr.)

Q. Besides those two concerns, that is to say, Sanders & Kirchmann, Inc., and Wolff, Kirchmann & Co., you were conducting the business on your own account as Henry Kirchmann, Jr., were you not?

A. As a ship broker, yes.

Q. And your place of business was there, also?

A. Not in the office of Wolff, Kirchmann & Co.

Q. No, no, I mean adjoining.

A. Adjoining; yes.

Q. With Sanders & Kirchmann?

A. With Sanders & Kirchmann.

Q. They were all communicating rooms, were they not? A. Yes, sir.

Q. The office of Sanders & Kirchmann, Wolff & Kirchmann, and your own?

A. You could walk from one office to another.

Q. You said, on your direct examination, that between September 16th and October 11th you had received no word from anybody about the "Commerce"?

A. I had received no word about the "Commerce"—what do you mean?

Q. Did you say that between September 16, 1919, and October 11, 1919, when the notice of cancellation was given, on that later date, you had received no word about the "Commerce" from either Mr. Blumer or Mr. Slingerland, or anybody connected with the Vacuum Oil Company and the Standard Oil Company?

A. I received no word from them that ever intimated they were going to cancel their charter.

(Testimony of Henry Kirchmann, Jr.)

Q. Either verbally or in writing?

A. Either verbally or in writing.

Q. Did you see those gentlemen during that time? You were here, [77] weren't you?

A. I don't think I saw either of them.

Q. You were in town, were you not?

A. I am not sure whether I was in town or not.

Q. Do you know whether or not you were in town?

A. I was on September 16th, I was on that date; as to whether I was in town up to October 11th, I am not sure. In fact, my recollection is I was out of town on October 11th.

Q. October 11th? A. I think so.

Q. Where were you, if you recall?

A. I think I was in San Rafael at that time.

Q. But you came back to San Francisco on that day: Is that what you mean?

A. I don't think so at that time.

Q. Were you living in San Rafael?

A. I was living in San Anselmo at that time, and I had business over in San Rafael.

Q. You mean just on that day?

A. For several days I was over there.

Q. But you came over to San Francisco every day?

A. There were several days that I did not come to San Francisco at all.

Q. For how long a time?

A. It probably covers a period of a week.

Q. From October 11th to October 18th?

(Testimony of Henry Kirchmann, Jr.)

A. No, it was prior to October 11th.

Q. Let me understand this: Between September 16th and October 11th you were away for a week, you think?

A. There was some time I was away, whether it was for a week, or not, I could not be sure, but I feel certain I was away at that time. I could look it up and be certain.

Q. You say at that time: You mean between September 16th and October 11th?

A. On September 16th I was in town, but whether I was in town on October 11th, I am not certain.

Q. Were you away between September 17th and October 11th? [78]

A. I cannot say just on what date I was away.

Q. Were you away for any length of time?

A. Yes, I was away for some time.

Q. In San Anselmo?

A. In San Anselmo and San Rafael.

Q. San Anselmo and San Rafael are points that can be reached within an hour from San Fran-

A. But there were matters there that took up my time.

cisco?

Q. I say that San Anselmo and San Rafael are points that can be reached within an hour from San Francisco? A. Yes, sir.

Q. There is a regular ferry boat service and a regular local train service? A. Yes.

(Testimony of Henry Kirchmann, Jr.)

Q. I don't understand what you mean. After October 11th you came back: Is that right?

A. Whether it was just after October 11th or later than that, I cannot say for certain; I was back the latter part of October, anyway.

Q. You were back the latter part of October?

A. I was back the latter part of October, yes.

Q. With whom did you have this business in San Anselmo, or in San Rafael?

Mr. McCLANAHAN.—I don't think that is material, is it?

Mr. SUTRO.—I don't have to disclose my purpose now. It may help us to fix the time when the witness was away.

Mr. McCLANAHAN.—I don't know but what this is trying to pry into private matters.

The COURT.—Sustained.

Mr. SUTRO.—I am not asking him the nature of the business, I just want to find out the persons with whom he had the business.

Mr. McCLANAHAN.—That is immaterial.

The COURT.—Proceed.

Mr. SUTRO.—Q. Mr. Kirchmann, you say you don't know whether you were here on October 11th?

A. I don't think I was here on [79] October 11th.

Q. Did you see the letter that Mr. Slingerland wrote on that day, I mean that Mr. Blumer wrote on that day?

A. I don't think I saw that until I returned.

Q. Until what?

(Testimony of Henry Kirchmann, Jr.)

A. Until I returned. I am quite sure I did not see it on October 11th; it was several days after that before I returned.

Q. How many days?

A. Probably within a week.

Q. You saw it within a week?

A. Within a week.

Q. Do you recall the letters that were written in reply to that letter? A. Yes, I do.

Q. You were here when they were written, were you not?

A. Some of them; the latter part of October, yes; some of the earlier letters I probably was not aware of.

Q. Referring to Exhibit No. 3, the letter from Mr. Blumer on October 11th, will you kindly tell us when you first saw that?

A. On my return to the office.

Q. How long after that letter was received at the office? A. Probably within a week.

Q. Within a week? A. Yes, sir.

Q. Do you recall Exhibit 4?

A. This is also probably within a week.

Q. You did not dictate that letter, then?

A. No, sir.

Q. And Exhibit No. 5?

A. I might have returned by this time, but I am not certain.

Q. You do recall, however, the answer to that?

A. Yes, sir.

(Testimony of Henry Kirchmann, Jr.)

Q. That would be Exhibit No. 6; that was written when you were in the office?

A. Yes, this letter was written after I was back.

Q. You dictated that letter, didn't you?

A. No, I didn't dictate it.

Q. You saw the letter before it was sent?

A. I saw the letter [80] before it was sent.

Q. Now, Exhibit No. 7, you were in the office when that was received at your office?

A. Yes, sir.

Q. And you recognize that? A. Yes, sir.

Q. And Exhibit No. 8, did you dictate that?

A. I didn't dictate it; no, sir.

Q. But you saw it before it was sent?

A. I saw it before it was sent.

Q. Now, Mr. Kirchmann, you said that the "Commerce" sailed from Levuka on June 19th?

Mr. McCLANAHAN.—About June 19th.

Mr. SUTRO.—Well, I just want to fix the date. When you made your opening statement you asked me if I would stipulate to the date and I said, yes. I would like to get that date fixed in the record. I have a copy of the master's declaration, or whatever you call it, and it says June 19th is the date. Do you want to stipulate that that is the date?

Mr. McCLANAHAN.—Yes.

Mr. SUTRO.—Very well. It is stipulated that she sailed from Levuka on June 19th.

Q. You said, Mr. Kirchmann: "I had received a designation of the loading berth from the Standard Oil Company." Do you recall who of the Standard

(Testimony of Henry Kirchmann, Jr.)

Oil Company designated the loading berth to you?

A. No, sir. We had many conversations with the Standard Oil Company—

Q. Just answer my question: You don't recall?

A. No, sir.

Q. Do you recall the words that were said to you?

A. The exact words, no; the purport of them, yes.

Q. I ask you for the exact words; you don't recall them? A. No.

Q. Do you remember when it was that you received the designation? [81]

A. A day or two prior to the time the vessel proceeded to Point Orient.

Q. A day or two prior to that time; that would be September 15th or 14th?

A. 14th or 15th; it might have been the 13th if the 14th was a Sunday.

Q. Had you inquired for a loading berth?

A. Yes, sir.

Q. You asked the Standard Oil Company?

A. Certainly.

Q. Who did you ask?

A. The Standard Oil Company were—

Q. I ask you, who did you ask?

A. The Standard Oil Company.

Q. Who in the Standard Oil Company?

A. I don't know. I talked to many in the Standard Oil Company.

Q. Who did you talk to?

A. I probably asked for Mr. Slingerland's office.

(Testimony of Henry Kirchmann, Jr.)

Q. You probably asked; do you know who you talked to?

A. I do not, other than the Standard Oil Company.

Q. I didn't ask you that, I asked do you know who you talked to.

A. Other than the Standard Oil Company; no.

Q. You are quite clear in your recollection, however, that you rang up the Standard Oil Company?

A. Yes, sir.

Q. And that you did it continuously from the time the vessel was on the dry-dock until September 13th or 14th?     A. What is that?

Mr. SUTRO.—Read the question, Mr. Reporter.  
(Question read by the reporter.)

A. That I did what.

Q. Rang up the Standard Oil Company to have a berth designated?

A. No, not continuously; the Standard Oil Company was ringing me up continuously, wanting to know how the "Commerce" was getting along.

Q. Do you know who in the Standard Oil Company you would talk to on those occasions?

A. Sometimes Mr. Slingerland, sometimes [82] Mr. Peas, sometimes Mr. Moore, and other times the telephone call would simply come in saying, "This is the Standard Oil Company," to which we would reply.

Q. And what would the question be?

A. How the "Commerce" was getting along.

Q. And that would continue along up to within



(Testimony of Henry Kirchmann, Jr.)

two or three days of when she sailed up there?

A. Yes, they wanted to know when she would go up.

Mr. SUTRO.—Will you, gentlemen, kindly produce a letter dated September 4, 1919, from the Standard Oil Company to Messrs. Sanders & Kirchmann, Inc.?

Mr. McCLANAHAN.—I cannot produce it now. I have not had any notice to produce it. I have never seen it, myself.

Mr. SUTRO.—Then, subject to the production of the original, I will show the witness a copy.

Mr. McCLANAHAN.—Let me see it.

Mr. SUTRO.—Yes. I am not offering it now. I am just going to show it to the witness, first.

Q. I will show you what purports to be a copy of a letter addressed from the Standard Oil Company to Sanders & Kirchmann, Inc., dated September 4, 1919, and I ask you if you recognize such a letter, or if Sanders & Kirchmann received such a letter?

A. I have no recollection of it. This is on the schooner "Luzon," isn't it?

Q. Yes. A. I have no recollection of it.

Q. As far as you know, such a letter was never received?

A. No; it might have been, but I have no recollection of it.

Q. You have no recollection of it? A. No.

Q. I will show you a letter from Sanders & Kirchmann to the Standard Oil Company, dated

(Testimony of Henry Kirchmann, Jr.)

September 4, 1919, and ask you if you recognize that. A. Yes, sir. [83]

Q. You recognize that? A. Yes, sir.

Q. That letter was sent, was it?

A. That letter was sent.

Mr. SUTRO.—We will offer in evidence the letter of September 4, 1919, to Sanders & Kirchmann, from S. G. Casad, which is as follows:

**Respondent's Exhibit "A."**

(Letter-head of Standard Oil Company.)

"San Francisco, Cal., Sept. 4, 1919.

In replying please refer to S-429-1  
Sanders & Kirchmann, Inc.,  
212-216 American National Bank Bldg.,  
San Francisco, California.

Gentlemen:

Schooner 'LUZON.'

Referring to your letter of today requesting that we give you berthing instructions for the above vessel, which you state you expect will be ready to berth Saturday, Sept. 6, 1919:

Will you kindly look to Mr. C. A. Blumer, 741 Mills Building, San Francisco, for information of this character, and do likewise with respect to any other unfinished charter parties with the Vacuum Oil Co., Pty., Ltd.

(Sgd.) S. G. CASAD, R. N. S."

(The letter was marked Respondent's Exhibit "A.")

(Testimony of Henry Kirchmann, Jr.)

We offer in evidence the letter identified by the witness, dated September 4, 1919, from Sanders & Kirchmann to the Standard Oil Company, to which Exhibit "A" is the answer. That letter is as follows:

**Respondent's Exhibit "B."**

(Letter-head of Sanders & Kirchmann, Inc.)

"San Francisco, Cal., September 4th, 1919.  
Standard Oil Co.,  
200 Bush Street,  
San Francisco.  
Attention Mr. Slingerland.

Gentlemen:

Schooner 'Luzon'—CASE OIL CHARTER-  
PARTY, DATED SAN FRANCISCO, NOV.  
19, 1918. [84]

This vessel is now on the dry-dock and we expect she will be ready to berth Saturday, September 6th, 1919. Will you please give us berthing instructions promptly?

Yours very truly,  
SANDERS & KIRCHMANN, INC.  
By H. KIRCHMANN,  
Secretary."

(The letter was marked Respondent's Exhibit "B.")

Q. In pursuance of the letter of Mr. Slingerland, or Mr. Casad—as a matter of fact, Mr. Kirchmann, Exhibit "A" was written by Mr. Slingerland, wasn't it—it is signed "R. N. S."

(Testimony of Henry Kirchmann, Jr.)

Mr. McCLANAHAN.—He said he didn't recognize the letter.

Mr. SUTRO.—Yes, that is a fact, he said he didn't recognize it.

Q. Do you recall whether or not, in pursuance of that letter, Sanders & Kirchmann wrote to Mr. Blumer? A. I do not.

Q. I show you a letter and ask you if you recognize it. A. Yes.

Q. That letter was sent, was it? A. Yes, sir.

Q. And this is a copy of the letter that was attached to it?

A. I don't know. May I see this letter a minute? Yes, I presume that is the letter that was attached to it.

Mr. SUTRO.—Now, while I am reading this, I will show these next so as to save time. Counsel can look at them. I offer in evidence a letter dated September 4, 1919, from Sanders & Kirchmann to C. A. Blumer, reading as follows:

**Respondent's Exhibit "C."**

San Francisco, Cal., September 4th, 1919.

Mr. C. A. Blumer,

Mills Building,

San Francisco.

Dear Sir:

We enclose herewith copy of our letter to the Standard Oil Co. requesting berthing instructions for the Schooner "Luzon." In case we are not correct in asking the Standard Oil Co. for these in-

(Testimony of Henry Kirchmann, Jr.)

structions, will you kindly give them to us, [85] and oblige,

Yours very truly,  
SANDERS & KIRCHMANN, INC.  
By H. C. KIRCHMANN,  
Secretary."

The letter that was attached to that and referred to in this letter is the letter of September 4, 1919, from Sanders & Kirchmann to Standard Oil Company, asking for berthing instructions regarding the "Luzon."

The COURT.—Those are both one exhibit?

Mr. SUTRO.—Yes.

(The documents were here marked Respondent's Exhibit "C.")

Q. While they are examining that, I want to ask you something: Referring to this Exhibit 7, which you said you saw when it was received, that you were in the office, and also Exhibit 8, which you saw before it was sent, and Exhibit 6, which you saw before it was sent, before those letters, 6 and 8, were sent, you had looked at the prior correspondence which had passed between Mr. Blumer and your office on that subject, had you not, that is to say, the cancellation of the charter? A. Yes, sir.

Q. And had read them and examined them carefully, had you not? A. Yes, sir.

Mr. McCLANAHAN.—What charter is that, the "Commerce"?

Mr. SUTRO.—Yes, the charter we are talking about here.

(Testimony of Henry Kirchmann, Jr.)

Q. When I say you had read these letters, I mean Mr. Blumer's cancellation notice of October 11?

A. Yes.

Q. And the reply from your office on October 11?

A. Yes.

Q. And Mr. Blumer's letter of October 14th?

A. Yes.

Q. And the reply from your office on October 15?

A. Yes.

Q. Also Mr. Blumer's letter on October 15th?

A. May I see those letters, so that I can be sure of the dates as you are calling them off?

Q. Yes; they are the same ones that you saw before? A. Yes. [86]

Q. I now show you two letters, dated respectively September 5, 1919, and September 6, 1919, from Sanders & Kirchmann to Mr. Blumer.

A. These letters were written by Sanders and Kirchmann.

Mr. SUTRO.—We offer these in evidence. The letter of September 5th, from Sanders & Kirchmann to C. A. Blumer, is as follows:

**Respondent's Exhibit "D."**

(Letter-head of Sanders & Kirchmann, Inc.)

“San Francisco, Cal., Sept. 5th, 1919.

Mr. C. A. Blumer,  
Mills Building,  
San Francisco.

Dear Sir:

Under date of September 4th we were in receipt

of a letter from the Standard Oil Co., San Francisco, asking us to look to your goodself for berthing instructions for our Schooner 'Luzon.' This you will note we did, thru our letter to you under date of September 4th.

This is also to confirm our conversation of even date, that we expect this vessel will come off the dry dock this evening and will be ready to tow to loading port on Saturday, the 6th inst. We have, however, arranged to tow the vessel on Sunday, the 7th inst., and meanwhile await your instructions for berthing.

We are enclosing herewith an affidavit from the master of the Schooner 'Luzon,' being an abstract from his log of the dates of May 24th and 25th, 1919, and from which you will note the vessel sailed on the 24th of May, 1919.

Yours very truly,

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,

Secretary."

I am not offering the affidavit, because it is not part of this case. The importance of this letter is to show that they got the other letter.

(The letter was here marked Respondent's Exhibit "D.")

The letter of September 6th is from Sanders & Kirchmann [87] to Mr. Blumer, and reads as follows:

(Testimony of Henry Kirchmann, Jr.)

**Respondent's Exhibit "E."**

(Letter-head of Sanders & Kirchmann, Inc.)

"San Francisco, Cal., Sept. 6th, 1919.

Mr. C. A. Blumer,  
Mills Building,  
San Francisco.

Dear Sir:

Schooner 'LUZON.'

Confirming our telephone conversation of this morning, we have agreed to hold this vessel for loading orders until Monday or Wednesday next, but it is agreed and understood that her lay days for loading commence Wednesday, A. M., September 10th, 1919.

Enclosed please find Surveyor's report from the Board of Marine Underwriters of S. F.

Thanking you for your favors, we remain,

Yours very truly,

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,

Secretary."

(The letter was marked Respondent's Exhibit "E.")

Q. The lay-days, and the commencement of them, is an important matter, isn't it? A. I don't know.

Q. You are in the shipping business, and have been, you have said, for a good many years?

A. And what was your question?

Mr. SUTRO.—Read the question, Mr. Reporter.

(Question repeated by the reporter.)



(Testimony of Henry Kirchmann, Jr.)

A. With ships, yes, it is.

Q. That is because the demurrage runs from the running of the lay days, does it not?

A. Yes, that is correct.

Mr. SUTRO.—Will your Honor indulge me a moment? The letters eliminate a good deal of the cross-examination, and, therefore, save time. Your Honor will indulge me while I look over these notes.

Q. Mr. Kirchmann, you were asked this question:  
[88]

“Q. Did you find his office there?

“A. I found his office; on the door was only the name C. A. Blumer.

Q. Did you, from Mr. Slingerland, learn at that time that he was representing the Vacuum Oil Company? A. I did not.”

Is that correct?

A. At that time I was not notified by Mr. Slingerland that he was representing the Vacuum Oil Company.

Q. What time do you refer to?

A. When I was sent over to his office.

Q. For what purpose were you sent over to his office?

A. In negotiating charters with Mr. Slingerland, from time to time I would be asked to see someone else; that is a big office; at this time I was asked to go and see Mr. Blumer.

Q. What time do you refer to? What time of the year, when?

A. The date of that I am not positive.

(Testimony of Henry Kirchmann, Jr.)

Q. Was that October, or November, or when was it? A. It was some time prior to September.

A. Yes, sir.

Q. Do you recall how long prior? A. I do not.

Q. Mr. Kirchmann, when you went to my office, after this cancellation of the charter had been given, and this libel had been commenced, you came there, did you not, as the result of a communication from Mr. Denman? A. Yes.

Q. Mr. Denman and I were in Portland, weren't we? That is to say, Mr. Denman so represented to you? There was a wire sent to you from Portland by Mr. Denman, wasn't there?

A. I don't recollect that.

Q. You don't recollect that?

A. No, I don't recollect that.

Q. Are you sure of your statement that the charter was finally consummated in my office?

A. Yes, sir.

Q. Don't you recall that you came to no agreement in my office, [89] and you all walked out?

A. We walked out, and then Mr. Blumer came to the elevator and called me back.

Q. That is your recollection, is it?

A. That is my recollection, yes.

Q. I simply wanted to correct that, Mr. Kirchmann, because it is not my recollection at all, and my recollection is very definite on the matter, because you all went out. I don't care to take the witness-stand personally if I can straighten this out

(Testimony of Henry Kirchmann, Jr.)

with you. It is not a matter of any great consequence, as I see it. Neither is that Mr. Blumer's recollection. See if this does not refresh your recollection. It is better for all concerned if there were no lawsuits; Mr. Denman and I had agreed in Portland to send you each a wire; pursuant to that agreement, I had sent Mr. Blumer a wire in which we suggested to you both to give and take, but that we came to no understanding and you all walked out of my room. Does that refresh your memory?

A. My memory is this way: We called at your office and saw you there, and saw Mr. Blumer there, and we tried to get together on the charter-party; you offered us a charter-party at a little higher rate if we would dismiss the libel, which we would not accept, and we left your office without coming together on the charter, and when we got to the elevator Mr. Blumer came after us and called us back, and the charter was closed.

Q. You gave your deposition in this case some time ago, did you not? A. Yes.

Q. Do you recall when it was?

A. It was prior to my leaving for the Philippine Islands.

Q. Well, it was on January 6, 1921. Did you read that deposition yesterday, before you testified here? A. I did.

Q. When did you read it?

A. Yesterday forenoon. [90]

(Testimony of Henry Kirchmann, Jr.)

Q. I will ask you if on that deposition you testified as follows, referring to this interview:

“Q. Who were present at that time?”

A. Mr. Blumer, Captain Beatty and myself.

Q. What was the nature of your business there?

A. We were over to see Mr. Blumer in connection with the business of the schooner ‘Luzon.’

Q. While you were there, did you have any conversation with Mr. Blumer in regard to the schooner ‘Commerce’?

A. Yes, I introduced Captain Beatty as the Master of the schooner ‘Luzon,’ and then Mr. Blumer asked me about the ‘Commerce,’ how the ‘Commerce’ was getting along loading, and I told him that the towboat had been ordered to take her up to the river that morning, up to the oil wharf that morning, and that she was either up there or en route up there.”

Did you so testify? A. That is correct.

Q. And did you testify as follows:

“Q. Was anything further said?”

A. Then Mr.”—

and then there are some dashes here, indicating a hesitation on your part, and then it proceeds as follows:

“Now, wait a moment, just ask me that question again, I didn’t quite get that.

“Q. Did you say anything further beyond that the schooner was up, or going up?”

(Testimony of Henry Kirchmann, Jr.)

A. That she was going up or going up to load, and I asked Mr. Blumer if he required any further notice with reference to her loading, and he answered no, that that was all that would be necessary.

Q. Was that all that transpired with regard to the 'Commerce'?

A. That is all that transpired with reference to the 'Commerce,' as our business was with reference to the 'Luzon.' " [91]

Did you so testify? A. I did.

Q. On cross-examination you were asked by me:

"Q. Mr. Kirchmann, you were present, Mr. Kirchmann, when the deposition of Captain Beatty was taken in this cause on October 22, 1919, were you not?"

A. At this office—yes, if that is the deposition.

Q. His deposition was taken only once, and you were present on that occasion?

A. I was present at that time; yes.

Q. Have you ever seen a transcription of the testimony of Captain Beatty?

A. I have.

Q. When did you last see it? A. To-day.

Q. When to-day?

A. About ten or fifteen minutes ago.

Q. Did you read it over?

A. I read it over.

Q. Did you read it over carefully?

A. I read it over.

(Testimony of Henry Kirchmann, Jr.)

Q. Who showed it to you?

A. Mr. Resleure.

Q. Did you ask to see it?

A. Yes, I asked to see it."

Did you so testify? A. I did.

Q. When you went to Mr. Blumer's office on September 16th, Mr. Kirchmann, what was the business that you had in hand?

A. It was business in connection with the "Luzon," in that the "Luzon" had completed loading her case oil.

Q. And you also had in mind to notify him about the "Commerce" being ready to load?

A. No, I did not; that came up at the time, and I so notified him.

Q. Oh, you happened to think of it, did you?

A. Mr. Blumer brought the question up, he wanted to know how the "Commerce" was getting along, and I told him she was towed up the river that morning.

Q. Do you remember what he said?

A. He said, "How is the 'Commerce' getting along?" [92]

Q. And what was your answer?

A. My answer was that the towboat had been ordered at daylight this morning, and that she was either at the wharf or on the way up.

Q. Do you know what towboat it was?

A. I do not.

Q. Did you order her?

A. The towboat was ordered from our office—

(Testimony of Henry Kirchmann, Jr.)

Q. Did you order her?

A. The towboat was ordered from our office—

Q. I didn't ask you that, did you order her?

A. I cannot say.

Q. Don't you know whether or not you ordered her?    A. I do not.

Q. You don't know which towboat it was?

A. I do not.

Q. And you don't know of your own knowledge that the "Commerce" was on the way up, do you?

A. Yes.

Q. Did you see her?    A. No, I didn't see her.

Q. And you didn't give the order for the towboat?    A. I might have, but I am not sure of it.

Q. What did Mr. Blumer then say, if anything?

A. He asked me how the "Commerce" was getting along; I told him she towed up that morning. I asked him if he required any further notice, and he said no.

Q. When you went back to your office that day, Mr. Kirchmann, did you write to Mr. Blumer?

A. I don't recollect.

Q. But your memory about the conversation is very clear?    A. Very clear.

Q. Very clear and very definite?    A. Yes.

Q. The business that you went there in connection with, the "Luzon," had also to do with other schooners, didn't it?

A. No, sir, only the "Luzon"; the "Luzon" and the mention of the "Commerce," that is all that came up.

(Testimony of Henry Kirchmann, Jr.)

Q. Is it not a fact that it had to do with the agency commission [93] of 2½ per cent which Mr. Blumer was charging your vessels on arriving in Australia or New Zealand ports, for services by his company to your vessels?

A. Yes. That refreshes my memory. That came up.

Q. Is not that the business on which you went there?

A. It was either that, or clearing the "Luzon"; of that I am not certain.

Q. What about the "Luzon"?

A. The "Luzon" had been loaded here.

Q. What was the business about her? You said it was either that or about the "Luzon"—what was that you said?

A. You have refreshed my memory; we went over there in reference to the agency commission charge in New Zealand, on the "Luzon." You are right.

Q. I ask you to look at this letter and see if you recognize it. A. This is correct.

Mr. SUTRO.—Have you a letter of September 15, from Mr. Blumer to Sanders & Kirchmann?

Mr. McCLANAHAN.—No, and I know of no such letter.

Mr. SUTRO.—I have a copy here.

Mr. McCLANAHAN.—I would have been glad to produce them if I had notice that you wanted them.



Mr. SUTRO.—I understand that, Mr. McClanahan. I am not questioning your gladness, etc.

Mr. McCLANAHAN.—But that is the proper procedure, Mr. Sutro. You are getting in a lot of copies of letters which I have never seen. You have not asked me to produce the originals.

Mr. SUTRO.—I am asking you now.

Mr. McCLANAHAN.—I cannot produce them; I have never seen them. You gave no notice.

Mr. SUTRO.—If these copies are not correct, you can substitute the original. [94]

Mr. McCLANAHAN.—This is a very unusual way to get in copies.

Mr. SUTRO.—Mr. McClanahan, as you know, there is a direct conflict in the testimony in this case, that is to say, the testimony given by your witnesses and the testimony given by our witnesses. I do not feel called upon, and I have not felt called upon to disclose my line of examination to you by asking you to produce letters before I offer them in court.

Mr. McCLANAHAN.—I say, that is an unusual procedure. It is not the usual practice.

Mr. SUTRO.—It is my practice; I have done it many times where I have had similar occasion to do it.

The COURT.—How are we going to find out that these are correct copies, unless it is admitted that they are?

Mr. SUTRO.—He can examine them.

The COURT.—I will state that the rule with us

(Testimony of Henry Kirchmann, Jr.)

is, when you want originals produced you make a demand and serve it, and then the other side produces them in court. It is not the practice to come into court with copies and offer them, and then afterwards verify them.

Mr. McCLANAHAN.—That is the practice here, also, your Honor.

The COURT.—Let us find out whether these are copies, or not.

Mr. SUTRO.—There has been no question about them so far, your Honor.

The COURT.—Well, submit them to counsel or to the witness.

Mr. SUTRO.—They refer one to the other.

Q. Do you recognize that letter, Mr. Kirchmann?

A. I do not; I don't recollect it.

Mr. McCLANAHAN.—The witness has not identified it.

Mr. SUTRO.—I understand that.

Mr. McCLANAHAN.—I have never seen it before.

This is most [95] unusual.

Mr. SUTRO.—I understand what you say about it, Mr. McClanahan. We offer in evidence an original, dated September 16th, from Sanders & Kirchmann to C. A. Blumer.

Q. As a matter of fact, Mr. Kirchmann, you dictated that letter, didn't you?

A. I might have; very likely I did.

Mr. SUTRO.—It reads as follows:

**Respondent's Exhibit "F."**

(Letter-head of Sanders & Kirchmann, Inc.)

"San Francisco, Cal., Sept. 16, 1919.

Mr. C. A. Blumber,  
Mills Building,  
San Francisco.

Dear Sir:

Acknowledging receipt of your favor of the 15th inst. and confirming conversation of this morning at your office, along with Captain Alex Beattie of our schooner 'Luzon.'

This is to advise you that we decline to pay the 2½ per cent agency fee which you have billed against the schooners 'Luzon,' 'Commerce' and 'Samar.' We are prepared to pay what we consider the usual fee—£5-5-0, and if you will render us corrected bills, will be pleased to send you check.

Yours very truly,

SANDERS & KIRCHMANN, INC.,

By H. KITCHMANN,

Secretary."

(The letter was here marked Respondent's Exhibit "F.")

Mr. McCLANAHAN.—I think it is proper that I should object to the introduction of all these copies, if your Honor please, without first being given the opportunity at least of verifying them with the originals. I will be glad to do that.

The COURT.—It is pretty late as to those that have gone in.

Mr. McCLANAHAN.—The whole procedure is unusual.

The COURT.—We want the usual procedure followed here. [96]

Mr. McCLANAHAN.—It is the usual proceeding that we be asked to produce the original, and then if we fail the copy can go in. These copies are not evidence.

The COURT.—But no objection has been made.

Mr. McCLANAHAN.—I objected right from the start.

Mr. SUTRO.—Not on that ground.

The COURT.—No, not on that ground.

Mr. McCLANAHAN.—I didn't make a formal objection; no.

Mr. SUTRO.—Mr. McClanahan, I will give you copies of these letters, and you can check them up, and if they are not correct, these will be withdrawn.

The COURT.—No, I am not going to allow that.

Mr. SUTRO.—Well, no objection to them was made on the ground that they are copies.

Mr. McCLANAHAN.—When counsel commenced, I didn't know but what there was only one letter; here is a whole string of correspondence which I have never seen, and I never have been asked to produce the originals. I object as immaterial, irrelevant and incompetent, and secondary evidence, and ask that they be stricken from the record.

Mr. SUTRO.—I say that the objection comes too late; it should have been made at the time of the offer.

(Testimony of Henry Kirchmann, Jr.)

The COURT.—The copies have gone in without objection, I cannot strike them out now.

Mr. SUTRO.—Q. When did the “Commerce” go on the drydock?

A. The “Commerce” went on the dry-dock probably about five or six days prior to September 16.

Q. You do not know definitely, of your own knowledge?

A. The definite date, no; I would have to look up the office record.

Q. These ten charters to which you referred, were all made at one [97] time, were they not, in September, 1918?

A. All made in the one month; I would have to look at my office record to make sure of that; my impression is they covered a series of months.

Q. That they covered a series of months?

A. Yes.

Q. I think your own exhibit is there. I will refresh your memory by it. Your counsel offered an exhibit here. Well, I don't care to pursue that matter now. You think they covered a series of months?

A. I think they cover a series of months. That is my impression.

Mr. SUTRO.—That is all.

#### Redirect Examination.

Mr. McCLANAHAN.—Q. Mr. Kirchmann, did you make a memorandum, from your office books, of the charters that were made with the Vacuum Oil Company? A. I did.

(Testimony of Henry Kirchmann, Jr.)

Q. And is that the copy you refer to?

A. Yes, that is the copy I refer to.

Mr. McCLANAHAN.—We offer this memorandum in evidence.

Mr. SUTRO.—I object to that as entirely immaterial, irrelevant and incompetent, it doesn't have any bearing on the issues before the court

Mr. McCLANAHAN.—It shows the dates the charters were filed.

The COURT.—Let it be admitted.

(The document was here marked Libelant's Exhibit 19.)

Mr. McCLANAHAN.—Q. Those letters that have gone in here from counsel's hands were letters that pertained to the "Luzon" and not to the "Commerce": Is that correct?

A. Yes, to the "Luzon."

Mr. McCLANAHAN.—We ask for an order opening the deposition of Alexander Beattie. I offer in evidence the deposition of Alexander Beattie, taken on behalf of the libelant, on Wednesday, [98] October 22, 1919.

The COURT.—Let it be opened and received in evidence.

Mr. McCLANAHAN.—May I read the deposition, if your Honor please? It is very short.

The COURT.—Yes, if you care to.

Mr. SUTRO.—I suggest that you omit the introductory part.

Mr. McCLANAHAN.—Yes, I will just read the testimony.

The COURT.—Read the questions and answers.

Mr. McCLANAHAN.—Very well, your Honor, it is not long. (Reads.)

I ask that the deposition of Charles Anderson be opened; it was a deposition taken on behalf of the libelant, on Tuesday, September 7, 1920. I ask for the same order in this. Omitting the stipulation, the deposition reads as follows:

(Counsel reads down to the beginning of the Commissioner's certificate.)

It seems that the deposition contains some further evidence in the certificate of the Commissioner, which I will read to the Court—

Mr. SUTRO.—Before you read that, the recital of the Commissioner is the usual recital until it comes to this particular part—I think a most unusual part, and I will read it to your Honor:

“I further certify that on the following day, to wit, on Wednesday, September 8th, the said Charles Anderson appeared in my office and stated that he desired to correct his testimony, whereupon the following occurred.”

Then the Commissioner asked the captain questions, and the captain answered them. We had no notice of this proceeding, we were not there. This Commissioner was not appointed for that purpose, [99] either by stipulation or by order of the Court. I submit that the entire proceeding, so far as the Commissioner was concerned, was extremely irregular, and that any testimony that he took in that *ex parte* fashion is not competent in any sense to

be received in this court. He was not appointed by stipulation or order of court, or in anywise to do such a thing.

Mr. McCLANAHAN.—I think it is a little late to make that objection.

The COURT.—There is no objection to the Commissioner, I take it?

Mr. SUTRO.—Not at all. It is to the questions that the Commissioner, in this *ex parte* and star-chamber proceeding propounded.

The COURT.—The Court could not consider that testimony.

Mr. McCLANAHAN.—My point is this: If there was any objection to this, it should have been made and brought up earlier than this, for the reason that if it had been, we might have had the opportunity of curing any defect. To make the objection now, your Honor, we are not able to cure any defect which may appear in it.

Mr. SUTRO.—In answer to that last suggestion, I would like to say that there never has been any opportunity until this moment to make the objection.

The COURT.—A motion could have been made to suppress it.

Mr. McCLANAHAN.—I will say, for the Court's information, that I am informed by Mr. Resleure—he can state it for himself.

Mr. RESLEURE.—I was present in the Commissioner's room when this extra testimony was taken; Mr. Denman furnished the Commissioner with the



authority for that procedure, and the Commissioner went ahead. [100]

The COURT.—It may be read; just what consideration I will give it is another matter.

Mr. SUTRO.—For the sake of the record, your Honor, may I have an exception to it?

The COURT.—Yes.

Mr. McCLANAHAN.—It reads as follows:  
(Reads.)

Mr. SUTRO.—If your Honor please, we ask that that examination by the Commissioner be stricken from the record; I just make the motion to preserve the objection upon the grounds stated.

The COURT.—Yes; I will let it stand, and what consideration I will give it will be a matter for the future.

Mr. McCLANAHAN.—I have a stipulation here that we may make an amendment to the amended libel covering the ownership. I feel sure we have proven this by Mr. Kirchmann in presenting the certificate.

Mr. SUTRO.—You ask me, in this document, to stipulate that the following is the fact: I don't know it. Is that what you want me to do?

Mr. McCLANAHAN.—It is this stipulation. It is hereby stipulated and agreed by and between the parties hereto that the amended libel on file herein may be amended in the following particulars:

1. By substituting H. W. Westphal, in place of the San Mateo Realty & Security Company, as a party libelant.

2. By striking out the name of Tillman & Bendel, a corporation, from the title of said cause, and by inserting in place thereof, the name Thusnelda Wilkens.

3. By inserting, in line 13, page 2, Article III of said amended libel, after the words "times since," the following: "Except that prior to the 18th day of April, 1919, said San [101] Mateo Realty & Security Company was the owner and holder of an interest as part owner in the said schooner "Commerce," and that on said day said San Mateo Realty & Security Company assigned its said interest to libelant, H. W. Westphal; and that on the 21st day of April, 1919, said Tillman & Bendel was the owner and holder as part owner of an interest in said schooner "Commerce," and that on said day said Tillman & Bendel assigned its interest in said schooner "Commerce" to libelant Thusnelda Wilkens.

Mr. SUTRO.—All right.

Mr. McCLANAHAN.—And the admission is made that the corporations named in the libel are existing corporations.

Mr. SUTRO.—Relying again on the statement of counsel that that is the fact, I will stipulate to it.

The COURT.—Very well, proceed.

Mr. McCLANAHAN.—That is our main case, your Honor.

**Testimony of A. D. Jones, for Respondent.**

A. D. JONES, called for the respondent, sworn.

Mr. SUTRO.—Q. Mr. Jones, what is your business?     A. I am a wharfinger.

Q. Whereabouts, Mr. Jones?

A. Near Richmond, at a place called Point Orient Wharf.

Q. For whom are you a wharfinger?

A. The Standard Oil Company.

Q. How long have you been there?

A. 15 years in June.

Q. Do you recollect the schooner “Commerce” coming up there to the Point Orient Wharf in September 1919?     A. I do, yes sir.

Q. Do you know Captain Anderson, of the “Commerce”?     A. Yes, I do.

Q. Did you see the “Commerce” come up about September 16, 1919, to the Point Orient Wharf?

A. Yes, sir.

Q. Did you see her dock?     A. Yes, sir.

Q. Where did she dock?

A. She docked in what we call Berth 3. [102]

Q. And when she docked, where were you?

A. I was over at Berth 1.

Q. Did you see the captain soon after she docked?

A. Yes, sir.

Q. About how long after?

A. Well, it was before lunch, before 12 o'clock.

Q. About an hour or two after she came in?

A. Well, no; she came in after eleven o'clock, if I remember correctly.

(Testimony of A. D. Jones.)

Q. Then it was about an hour or so after she came in?

A. It was between 11 and 12 when he came over to the office.

Q. Did the captain stay around the wharf that day, or what did he do?

Mr. McCLANAHAN.—I object to the question as leading.

The COURT.—Q. What did the captain do?

A. The captain got an automobile and went into town.

Mr. SUTRO.—Q. When you say he went into town, what do you mean?

A. He went toward Richmond; where he went, I could not say.

Q. Did he have any conversation with you prior to the time that he went?

A. He came over to the office, and we had the usual greetings, talking; I don't know that any particular thing was said, except I might have asked him how his health was, or something like that.

Q. At that time, Mr. Jones, will you state to the Court whether there was a strike on among the stevedores?

A. This was on a Tuesday, if I remember correctly, and I think there was a strike called on a Monday; I am not positive about that.

Q. At any rate, when he was up there there was a stevedores' strike on, was there not?

A. Yes, sir.

(Testimony of A. D. Jones.)

Q. Will you state whether or not the "Commerce" had steam in her donkey at the time she arrived there?

A. I could not say; [103] I didn't see any steam.

Q. Do you know whether there was any crew?

A. No, I don't think there was anybody on board, except the captain, and a mate, and possibly a watchman, or something like that.

Q. Was there a gear-rig there?

Mr. McCLANAHAN.—I object to that as immaterial. That raises the question as to what is a vessel ready to load.

Mr. SUTRO.—I submit the question to your Honor.

The COURT.—Let it go in the record.

Mr. McCLANAHAN.—Exception.

A. Well, I could not say whether there was any gear rigged, or not; I didn't see any gear, anyway.

Mr. SUTRO.—Q. Did you go aboard the ship that day the captain spoke to you, Mr. Jones?

A. No, sir, I did not.

Q. Did you ever examine the dunnage of that ship?

A. I might have went aboard the ship and looked down the hold, but I didn't go down in the hold.

Q. Did you ever examine the dunnage?

A. Only from deck.

Q. Did you ever examine the dunnage for the purpose of making an examination of it?

(Testimony of A. D. Jones.)

A. I did before she started to load, yes, sir.

Q. That is, the second time?

A. When she started to load, yes.

Q. You mean when she started to load in November, 1919?     A. That same year, yes, sir.

Q. That was over a month and a half after she arrived there first, wasn't it?

A. Yes; she was there seven or eight weeks, or something like that; I don't remember exactly.

Q. But prior to that time, you had never examined the dunnage?

A. Not unless I looked from the deck. I didn't go down in the hold.

Q. Prior to that time, did you ever say any words to this effect. [104] or anything of a similar nature: "That is the finest dunnage I ever saw laid in this country?"

A. I might have said, "The dunnage looks fine, Captain," or something like that.

Q. I mean prior to the time when you examined her when she loaded; had you ever said anything like that then?

A. I say I might have looked down in the hold and said, "Captain, the dunnage looks fine," or something like that. I don't remember anything about it.

Q. It was casually looking into the hold?

A. Yes.

Q. Did he ever make any remark to you, when he arrived there, to the effect that the "Commerce" was ready to load?

(Testimony of A. D. Jones.)

A. The latter part of the week before he came up, he called me up and—

Q. No, I mean when he arrived, the day he got there, did he come to you and say, “The ‘Com-merce’ is ready to load?” A. No.

Mr. McCLANAHAN.—And there is no such evidence in the record.

Mr. SUTRO.—Q. Did he make any remark of that kind to you four or five days after he was there?

A. Well, he was there for a long while, you know.

Q. I mean within the first four, or five, or six days, did he make any such remark to you?

A. None that I remember, no, sir.

Q. About three weeks or so after the “Com-merce” had arrived there, do you remember receiving a telephone message from somebody purporting to telephone from Sanders & Kirchmann’s office? A. Yes.

Q. What was it?

A. There was a lady called up and asked for the captain.

Q. What did she say, that she was from Sanders & Kirchmann’s office? A. Yes, sir.

Q. And what did you say?

A. She asked for the captain, and I told her that the captain was not on board the ship.

Q. You say that was about three or four weeks after the “Commerce” [105] had come up?

A. That was after the ship was shifted over into

(Testimony of A. D. Jones.)

what we call Berth 2; I don't recall how long that was.

Q. We can fix that date later; it was right after that, was it?   A. Yes, sir.

Q. Did she ask you to leave word for him?

Mr. McCLANAHAN.—I object to that as leading.

Mr. SUTRO.—Q. What did she ask you to do, so far as the captain was concerned?

A. She asked me to have the captain report to their office.

Q. Did the captain thereafter come back to Point Orient Wharf?

A. I don't know whether he came back, or whether he called up, but anyway, word was gotten to him to call up his people.

Q. Did you see him after that?

A. He came back over to the ship, yes.

Q. How soon afterwards?

A. It might have been two or three days, or something like that.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. What did he say?

A. Well, he said several things. It was the usual conversation, I guess. The main thing he said was, he was afraid he was going to lose his charter.

Q. Do you recall the words he said?

A. Yes, he said that somebody in the office pulled a bloomer and didn't attend to the ship.

Q. By "pulled a bloomer," what did he mean?



(Testimony of A. D. Jones.)

A. I suppose he meant they did not attend to the ship.

Q. Did not attend to the ship, in what way?

Mr. McCLANAHAN.—I object to that, your Honor.

Mr. SUTRO.—I want him to explain that expression, “pulled a bloomer.”

The COURT.—Proceed.

Mr. SUTRO.—Q. Did he ever ask you for any cargo, prior to [106] the time that she loaded in November, Mr. Jones?     A. No, sir.

Q. Did he ever complain to you, prior to that time, that she was not getting any cargo?

A. The cargo was there.

Q. I say, did he ever complain to you that she was not getting any?     A. No, sir.

Mr. SUTRO.—That is all.

Cross-examination.

Mr. McCLANAHAN.—Q. You are connected with the Standard Oil Company, are you?

A. The Standard Oil Company of California, yes, sir.

Q. What is your official title, if you have any?

A. Wharfinger, so far as I know.

Q. Are you the head wharfinger there?

A. I have charge of the wharf, yes.

Q. And the head man at Point Orient?     A. Yes.

Q. You have loaded a good many of these schooner ships?     A. Yes.

Q. Tell the Court how it is done, the process of

(Testimony of A. D. Jones.)

taking the cargo that is there in case oil and getting it on the ship, what takes place?

A. It all depends on the size of the ship, and the condition of the ship.

Q. I am not speaking of the ship now; I want to know what you do with the cargo.

A. The cargo is delivered to the ship's tackles; they can do as they please about getting it on board.

Q. Who delivers it to the ship's tackles?

A. We do.

Q. And by "we" you mean the Standard Oil Company? A. Yes, sir.

Q. It is at a warehouse, I suppose, isn't it?

A. Yes.

Q. And how do you get it to the ship's tackles?

A. We usually have conveyors for cases, and the barrels we roll.

Q. You roll the barrels and you have what you call case conveyors that you use when it is in the tins? A. Yes, sir.

Q. What method is used to convey the oil, when it is in cases, [107] from your warehouse to the ship? A. Conveyors.

Q. How do you handle the conveyors?

A. Pick them up with your hands and put them on the conveyors.

Q. And how do you handle the conveyors?

A. The cases roll right along; the conveyors are ball-bearing rollers, on which the cases roll.

Q. They roll on the ball-bearing apparatus right to the ship's tackle? A. Yes, sir.

(Testimony of A. D. Jones.)

Q. And it is from there the ship takes them?

A. Yes, sir.

Q. These cases of petroleum products in your warehouse there are of different brands, aren't they?

A. Quite often, yes.

Q. You have the brand stamped on the outside of the case?

A. Surely, each kind of oil is always marked.

Q. Branded?      A. Surely.

Q. Where do you get your instructions when you are to furnish a cargo for a vessel, and it is case oil, where and from whom do you get your instructions with reference to the different brands that are going to be used in that particular shipment?

A. There are always orders issued on each particular shipment.

Q. Issued by the Standard Oil?      A. Yes.

Q. To you?      A. Yes.

Q. And you would get a copy of those orders?

A. Yes.

Q. And that is your guide in picking out of your warehouse the different brands of oil for the waiting ship: Is that right?

A. Yes. I don't have a stock on hand, the goods are sent out as they are ordered.

Q. Sometimes, however, you have stock in your warehouse, haven't you?

A. We arrange cargoes for ships that are coming up, yes.

Q. When a ship, then, has reached your dock for

(Testimony of A. D. Jones.)

loading, it is a [108] fact that you sometimes have not the cargo there for her? A. Yes.

Q. And the cargo has to be sent from where to Point Orient to make the shipment?

A. From a place called Richmond, about three miles from Point Orient.

Q. Three miles? A. Three or four.

Q. Do you remember loading the "Commerce" when she loaded in November, 1919?

Mr. SUTRO.—I object to that upon the ground that it is not material, so far as this charter-party in issue here is concerned.

The COURT.—He may answer.

Mr. SUTRO.—Exception.

A. Yes, I remember the ship loading.

Mr. McCLANAHAN.—Q. Was the cargo that was loaded on the "Commerce" at that time on hand at the Point Orient dock, or was it brought from Richmond?

Mr. SUTRO.—I object to that as immaterial, irrelevant and incompetent. It is entirely immaterial, your Honor. The material fact in this connection, if there is anything in this line of question at all, is where the cargo was for the "Commerce" for this voyage we are now speaking about here. It doesn't make any difference where the cargo for the second voyage was, whether it came from Richmond, or from the south, or from anywhere else. It cannot possibly affect this issue.

The COURT.—Let it go on the record.

(Testimony of A. D. Jones.)

Mr. SUTRO.—Exception.

A. Do you mean the cargo that was loaded for the trip when she laid there so long, or for the following cargo

Mr. McCLANAHAN.—Q. I mean the cargo she loaded after laying there so long; that was in November, 1919.

A. I could not recall exactly whether the entire cargo was there.

Q. Do you think it was all there?

A. I would say that there [109] was 90 per cent of it there, anyway.

Q. And the balance had to come from Richmond?

A. You understand that on most cargoes we have a leeway; we usually try and decide how much a ship will carry, so as to get that amount out there, and not to get too much out there.

Q. So as not to interfere with the work as it goes on? A. With other freight coming in.

Q. Do you remember when the “Commerce” first arrived at the Port Orient dock, whether you had there at that time her cargo, or any part of it?

A. We had the larger part of it; I cannot remember exactly how much of it.

Q. But not all of it?

A. As I say, we had at least 80 or 90 per cent of it.

Q. And you used, then, for the second charter-party, the cargo that was intended for the first?

A. Well, as far as I know, it is all one charter; I don't know anything about the charter.

(Testimony of A. D. Jones.)

Q. Then I will put it this way, Mr. Jones: The stock of case oil that was in your warehouse at the time, which was intended for the "Commerce" when she first arrived there, was finally used when she did ultimately load?

Mr. SUTRO.—I submit that that is entirely immaterial to the issue.

The COURT.—Let him answer, if he knows.

A. As far as I know. I don't remember if that is so. I suppose it did, yes.

Mr. McCLANAHAN.—Q. As far as you know?

A. Yes.

Q. Do you remember the brands of oil that went on the "Commerce." A. No, sir.

Q. What other vessel were you loading at Point Orient when the "Commerce" first got there?

A. We were not loading anything [110] in Berth 3. I might have had what I call a tanker in Berth 1, but I don't remember the name.

Q. Don't you remember that the "Luzon" was there? A. At Point Orient?

Q. No, the "Jewett"; don't you remember that the schooner "Jewett" was there?

A. I don't remember. The "Jewett" loaded there about that time, but whether she was there at this particular time, I could not say.

Q. Don't you remember that the "Jewett" loaded there at the time of the strike?

A. Yes; they loaded with union stevedores, I believe.

(Testimony of A. D. Jones.)

Q. They loaded with union stevedores?

A. Yes, sir.

Q. How did the "Commerce" load in November, 1919?

A. I don't remember whether the strike was over when she loaded, or not.

Q. With what stevedores did she load, union or non-union?

A. As I say, I don't remember whether the strike was over then, or not; I don't remember whether they used union or non-union men.

Q. You don't remember whether stevedores were available, do you, at the time the "Commerce" came there?

A. Well, I know the "Jewett" loaded there.

Q. She was loaded?     A. Yes.

Q. You don't remember whether you could or could not have gotten other stevedores?

A. No, I don't know anything about that; I have nothing to do with that.

Q. Do you know, between the time of the arrival of the "Commerce" and your inspection of her dunnage just prior to her loading, whether any other dunnage was put on the vessel?

A. No, I could not answer that.

Q. Do you know whether any change was made in the vessel during that period of her lying there?

A. I think the captain and one [111] man was aboard most of the time; I don't know what they were doing; they might have been changing the dunnage, for all I know.

(Testimony of A. D. Jones.)

Q. You don't know of any change, do you?

A. Not that I remember particularly, no, sir.

Q. Do you know what is the duty of a stevedore after taking charge of a cargo which has been delivered at ship's tackles?

Mr. SUTRO.—I submit that that is calling for the conclusion of the witness.

Mr. McCLANAHAN.—I am not asking for a conclusion, I am asking for a fact.

The COURT.—Let him answer.

A. What is the question?

Mr. McCLANAHAN.—Q. Do you know what he does after he has had the cargo tendered to him at the ship's tackles?

A. You mean the foreman?

Q. The foreman and his gang, what do they do with the cargo?     A. They load it on the ship.

Q. They load it on the ship?     A. Yes, sir.

Q. The crew doesn't load it, does it?

A. No, sir.

#### Redirect Examination.

Mr. SUTRO.—Q. So far as the identity of the cargo is concerned which finally went on the "Commerce" when she loaded in November, 1919, you do not pretend to say whether or not that is the same cargo that was there when she first came up on September 16, 1919, do you?

A. I said I don't remember.



**Testimony of C. M. Connolly, for Respondent.**

C. M. CONNOLLY, called for the respondent, sworn.

Mr. SUTRO.—Q. Mr. Connolly, what is your business? A. I am labor foreman.

Q. Where?

A. At the Point Orient Wharf. [112]

Q. Of the Standard Oil Company?

A. The Standard Oil, yes.

Q. How long have you been there?

A. Sixteen years next December.

Q. Do you recall the schooner “Commerce” coming up there to that wharf on September 16, 1919, about that time? A. Yes, about that time.

Q. Were you there when she docked?

A. Yes, sir.

Q. Do you remember ever having seen the captain of the “Commerce” before that time?

A. No, I don't suppose I ever saw him in my life.

Q. Did he make any remark of any kind to you when the ship was put alongside the dock, with reference to her being ready to load?

A: Not anything specially that I can remember. If you call off such a thing, I might try to recollect it.

Mr. McCLANAHAN.—I would suggest that you ask what he said to him, Mr. Sutro, and not lead the witness.

Mr. SUTRO.—I have not asked him the question, yet.

The COURT.—Proceed.

(Testimony of C. M. Connolly.)

Mr. SUTRO.—Q. Did he say to you, “The ship is ready to load,” or words to that effect, or of a similar import, or anything of that kind?

Mr. McCLANAHAN.—I object to the question as leading, and also as having been answered; it is the same question that the witness has just answered.

Mr. SUTRO.—I don’t think he has.

The COURT.—He may answer it.

A. No, sir.

Mr. SUTRO.—Q. Did you go on the ship right after she arrived to examine the dunnage?

A. No, I did not examine the dunnage. I am vested with no authority to examine dunnage.

Q. Have you ever received from any ship captain, notice of readiness to load: Is that your business, to receive such notices? [113]

A. That is not my business, no.

Q. Did you ever receive such notices?

A. No. It would be unusual if I did, and I would remember it. I don’t think I ever did, because—

Q. Do you remember where the captain went after the “Commerce” docked?

A. No, I don’t know that.

Q. Mr. Jones testified, and you heard his testimony here in court, didn’t you?

A. I heard some of it; I don’t hear very well; I was sitting in the back, there.

Q. He testified about a conversation that Captain Anderson had with him some three or four

(Testimony of C. M. Connolly.)

weeks after the "Commerce" had arrived at Point Orient. He said that Captain Anderson had told him that somebody had slipped a bloomer, or made a mistake, and they were going to lose the charter?

A. Yes, I was there, but whether it occurred in the office or outside the office, that I don't remember.

Q. What did you hear? Tell the Court what you heard.

A. Well, as far as I remember, he was out of sorts, the old captain was, and whether it was as I am speaking now, word for word, I don't remember that, but I remember he said, "It looks as though they would lose the charter, because somebody has made a mistake," or "pulled a bloomer"—maybe that is the expression he used. That is all I ever heard him say about it.

Q. Did he say how they had made a mistake?

A. No.

Q. You didn't hear that? A. No.

Q. Did he ever ask for any cargo for the "Commerce"? A. No—

Mr. McCLANAHAN.—Just a minute. I object to that as immaterial.

The COURT.—The question is answered.

Mr. SUTRO.—Q. How far away from the "Commerce" was the oil [114] in the cases at the time that she docked?

A. I won't be much out if I say 14 feet from the ship's side.

Q. There was a warehouse there? A. Yes.

(Testimony of C. M. Connolly.)

Q. And the cargo intended for her was in the warehouse?

A. Yes, the "Commerce's" cargo was in the warehouse when she got there.

Q. Do you recall seeing the donkey engine on the "Commerce" when she came up?

A. Well, of course, I have seen it many times; I don't just remember it the very minute she came up.

Q. Was there steam in the donkey?

A. That I would not swear to.

Q. Did you know anything about the dunnage in the "Commerce," did you know whether it was good or bad?

A. No; as I say, if I had, I would have held it to myself, because I am not vested with the authority to pass on the dunnage; that is not my business.

Mr. SUTRO.—That is all.

Cross-examination.

Mr. McCLANAHAN.—Q. Mr. Connolly, you assisted in tying the vessel up to the dock, did you not? A. Yes.

Q. Is that a part of your duty?

A. If I have men that are engaged elsewhere, and I can do some good once in a while in giving a hand, I do so, yes.

Q. Did you go on the ship after that?

A. Many a time after that, but just when, I do not know.

Q. You spoke of having remembered a conversation that Mr. Jones testified to; were you a party to that conversation? A. No, just a listener.

(Testimony of C. M. Connolly.)

Q. Where were you, how close?

A. Well, by feet, I could not say, but I must have been close enough to hear.

Q. You heard it, did you?      A. Yes, sir.

Q. Tell us what you heard, as you remember it?

A. Well, as I said before, the captain seemed to be out of sorts, and— [115]

Q. I am not asking you how the captain seemed, I want the conversation that you heard.

A. And he said something about being afraid they were going to lose the charter, because somebody, as I say, either made a mistake or pulled a bloomer—I forget just the expression.

Q. He said that somebody pulled a bloomer?

A. Very likely, as that is the expression that comes to me.

Q. Who uses that expression?

A. The captain.

Q. Had you ever heard that before?

A. Oh, yes, I had heard it before.

Q. Is it a common expression?

A. Yes, it is a common expression.

Q. Who is it used by?

A. Well, in other words, a man making a mistake.

Q. I say, who is it used by?      A. Used by?

Q. Yes, that expression, “pulled a bloomer.”

A. You mean who invented the expression?

A. No, who uses it, after it was invented?

A. A man who uses slang.

Q. The captain of the “Commerce” was a Norwegian, wasn’t he?      A. Yes.

(Testimony of C. M. Connolly.)

Q. Spoke English rather badly, didn't he—broken English?

A. Well, something like many of the old Norwegian or Swedish skippers around there do. I don't know that he was any worse or any better.

Q. You have said on your direct examination that the cargo for the "Commerce" was in the warehouse? A. Yes, sir.

Q. You mean when she first arrived there?

A. Yes.

Q. All?

A. I could not say that all of it was, but there was the biggest part of it, I know that.

Q. Did you have anything to do with the cargo that is in the warehouse for a waiting ship?

A. Yes, when I receive the [116] orders to give that ship the cargo, I see that my men get the cargo to the ship's side in reasonably quick time to give good service; that is my business.

Q. From whom do you get your orders to make that kind of a delivery?

A. Mr. Jones is the wharfinger, and I look to him for my orders.

Q. Did you get any orders to that effect when the "Commerce" first came to the dock at Point Orient? A. No, sir.

Q. The first time you got orders to furnish a cargo for the "Commerce" was when she loaded in November, later on?

A. I would naturally give her the cargo if I was

(Testimony of C. A. Blumer.)

given the order; when she did take the cargo, I got the order to give it to her, yes, sir.

Mr. McCLANAHAN.—That is all.

**Testimony of C. A. Blumer, for Respondent.**

C. A. BLUMER, called for the respondent, sworn.

Mr. SUTRO.—Q. Mr. Blumer, what is your business?

A. Agent for the Vacuum Oil Company, Pty., Ltd.

Q. Were you such agent in August, of 1919, and from thence on continuously until the present time?

A. Yes.

Q. Do you recall having a conversation with Mr. Kirchmann, Sr., of Sanders & Kirchmann, Inc., on the floor of the Merchants Exchange, along about the beginning of September, in the fore part of September, 1919?

A. In the early part of September.

Q. Do you recall having a conversation with him about the "Commerce" at that time?

A. Yes, sir.

Q. As nearly as you can, Mr. Blumer, fix that date, when was it?

A. On the Friday before she went up, as nearly as I can remember, because I don't come on the Merchants Exchange floor on Saturday.

Q. She went up on the 16th, it seems; so that would have been on [117] Friday, the 12th of September, 1919, as nearly as you can recollect?

(Testimony of C. A. Blumer.)

A. Yes.

Q. Will you please state to the Court what that conversation was?

A. Mr. Kirchmann said that the "Commerce" was on the dry-dock, and he wished, if possible, to save the expense of an extra towage, and if I could oblige him by telling him where the cargo was he would appreciate it, so that he could have her moved from the dock to where the cargo would be loaded, or where it was intended to load her, and that he might tow her up on Sunday. That is why I placed it roughly on Friday, because I don't go to the Exchange on Saturday.

Q. What did you say?

A. I told him I would find out, and I telephoned to Mr. Slingerland's department, probably to Mr. Slingerland, himself, I don't remember, but I found the cargo was on the Point Orient Wharf, and I telephoned Mr. Kirchmann to that effect.

Q. That is all you said to him in that regard?

A. Yes.

Q. Do you recall a visit to your office on the following Monday from Mr. Kirchmann, Jr., and Captain Beattie, of the "Luzon"? A. Yes.

Q. Had you met Captain Beattie before that?

A. No, I think not.

Q. I show you a letter, Mr. Blumer, and ask you if you recognize that letter? A. Yes.

Q. While counsel is looking at it, I would like to see the letter of September 4th, from Mr. Slinger-



(Testimony of C. A. Blumer.)

land, in which he notified Sanders & Kirchmann that they were to make their inquiries from Mr. Blumer. I show you a letter which has been marked Respondent's Exhibit "A," and ask you if you recognize that.     A. Yes.

Q. Is that a copy of a letter which you received from Mr. Slingerland?     A. Yes.

Mr. SUTRO.—Now I offer in evidence a letter from Sanders & [118] Kirchmann to Mr. Blumer, dated July 15, 1919, which reads as follows:

**Respondent's Exhibit "G."**

(Letter-head of Sanders & Kirchmann, Inc.)

“San Francisco, Cal., July 15th, 1919.

Mr. C. A. Blumer,

Mills Building,

San Francisco.

Dear Sir:

Have for acknowledgment your favor of the 14th inst., in reference to agency commission in connection with Schooner 'Luzon' at Wellington, N. Z.

We have heard nothing from our master from New Zealand in reference to this, although we have his settlement account from there.

Clause 15 of the Charter Party provides for agency fee of 2½%, but this is specifically stricken out in the Charter-Party and it was not one of the conditions that vessel was to pay an agency fee.

In any event, we must await the arrival of our

(Testimony of C. A. Blumer.)

captain here before we can take this up further with you.

Yours truly,  
SANDERS & KIRCHMANN, INC.,  
By H. KIRCHMANN,  
Secretary."

(The document was marked Respondent's Exhibit "G.")

Q. Thereafter, and pursuant to the advice in that letter, that they are awaiting the captain's arrival before they can take the matter up further with you, do you recall whether or not the captain called on you?

A. No, he did not, until he came with Mr. Kirchmann.

Q. When did he come with Mr. Kirchmann?

A. On the 16th of September.

Q. At that conversation, was the schooner "Commerce" in any wise mentioned? A. No.

Q. Did Mr. Kirchmann, Jr., make any remark of any kind or nature [119] to you concerning the readiness of the schooner "Commerce" to load—in that conversation?

A. None whatever, so far as I am aware.

Q. Did Sanders & Kirchmann, Inc., or Wolff, Kirchmann & Co., or Henry Kirchmann, Jr., or anybody for the "Commerce," ever make any demand on you, the Vacuum Oil Co., Pty., or anybody, so far as you know, for any demurrage on account of the "Commerce" after the purported notice of readiness to load had been given to you? A. No.

(Testimony of C. A. Blumer.)

Q. When did the lay-days under that charter commence?

A. Well, they would commence when she had given notice of readiness to load and been accepted.

Q. Did they ever complain to you, or communicate with you after the 16th day of September, 1919, on which day it is claimed that verbal notice of readiness to load was given to you, or in any wise make any suggestion to you, either verbally or in writing, that the "Commerce" was lying at Point Orient and waiting to receive a cargo?

A. No, not prior to the cancellation.

Q. Mr. Blumer, there was introduced in evidence here a surveyor's certificate; how long have you been in the shipping business?

A. Nearly 20 years.

Q. What is the object and purpose of a surveyor's certificate?

Mr. McCLANAHAN.—I object to that question as being indefinite. I know something about surveyors' certificates, they are very numerous. I do not think the witness can answer that question unless it is made more definite. I certainly cannot understand it.

Mr. SUTRO.—I will take a ruling on the question.

The COURT.—It is rather indefinite.

Mr. SUTRO.—You say it is indefinite, your Honor?

The COURT.—Yes, rather indefinite. [120]

Mr. SUTRO.—Q. A surveyor's certificate, as I

(Testimony of C. A. Blumer.)

understand it, is a certificate that a vessel is seaworthy: Is that a fact? A. Yes, sir.

Q. And that she is in condition to receive cargo?

A. Yes.

Q. Has the surveyor's certificate got anything to do with the notice of readiness to load?

A. No, not altogether; the notice of readiness to load, without the surveyor's certificate—you might ask for the surveyor's certificate if you have the readiness, but the surveyor's certificate without the readiness to load is of no value.

Q. In this charter, there is contained a cancellation privilege; at the time this charter was made, Mr. Blumer, were those rates high or low?

A. Exceptionally high.

Q. Is that cancellation certificate considered a valuable privilege amongst shipping people?

A. Certainly.

Q. Explain to the Court why it is.

A. There are many contracts, contracts of sale made with the stipulation for shipment within a given time, and the party to the sale may make a charter, and he will protect himself in the same way, that if a vessel does not tender at a certain time the charter may be cancelled; or, rates may drop, and he wants to protect himself in those rates, and the charter is made accordingly.

Q. Is it a customary clause in a charter?

A. I have never seen a charter without it.

Q. Do you know whether when this notice of cancellation which you gave and which has been intro-

(Testimony of C. A. Blumer.)

duced in evidence here, do you know whether at that time Sanders & Kirchmann had other vessels lying in this harbor which were idle and for which they were the managing owners or the agents for the owners?

A. Yes, there were about three others. [121]

Q. Name them? A. The "Luzon" was here.

Q. Where was she?

A. The "Luzon" had loaded her case oil, and she was lying alongside a lumber wharf somewhere.

Q. What else?

A. The "Samar" came in somewhere about between the 20th and the 25th of September; and the "Philippine," within three or four days of the "Samar." They both came in loaded with copra. I understand they remained idle in the stream. The "Luzon did not start loading until after that cancellation notice was sent in on the "Commerce."

Q. At that time, was there a stevedore strike on in this harbor?

A. Yes, I understood there was.

Q. Had you ever seen either Connolly or Jones, or had any communication with them in any wise until after this controversy arose?

A. Not that I remember.

Q. Had you in any way, by oral declarations, or in writing, appointed them, or either of them, your agent or the agent of the Vacuum Oil Company?

A. No, certainly not.

Q. Had either of them, in any way, so far as you

(Testimony of C. A. Blumer.)

know, for any purpose whatever, ever represented the Vacuum Oil Company. A. No.

Q. Do you know where the second charter,—and this is simply for the information of the Court—was negotiated?

A. On the floor of the Merchants' Exchange.

Q. Was it done in my office? A. No.

Q. Do you recall the interview in my office?

A. Yes.

Q. That interview was for the purpose of trying to reach a compromise between the parties, was it not? A. Yes.

Q. Do you recall receiving a wire from me from Portland? A. Yes.

Mr. McCLANAHAN.—Are you going to introduce this wire?

Mr. SUTRO.—Yes. It is a part of the entire compromise negotiation. You opened the door for it. [122]

Q. Is that the wire that you received? A. Yes.

Mr. SUTRO.—I shall testify afterwards that Mr. Denman, representing the owners of the "Commerce" stood by me and saw me dictate that telegram, and told me he would send a similar one.

I offer this in evidence.

Mr. McCLANAHAN.—It is objected to as immaterial, irrelevant and incompetent, and outside of the issues in this case; it cannot bind the parties to this action, especially the libelant.

The COURT.—Read it into the record.

Mr. SUTRO.—It is as follows:

(Testimony of C. A. Blumer.)

**Respondent's Exhibit "H."**

(WESTERN UNION TELEGRAM.)

"1919 Oct 28 AM 11 13

"Portland Org 1055 A 28

C A Blumer

Mills Bldg

San Francisco Calif

Commerce After conference with Denman we agree vessel should be rechartered on basis which includes settlement dispute over prior charter In other words each side should give and take in making rate for recharter Denman sending similar wire to Kirchmann.

ALFRED SUTRO."

(The document was marked Respondent's Exhibit "H.")

Q. And it was in pursuance of that telegram that we met in my office and endeavored to compromise the dispute which had arisen between the parties?

A. Yes.

Q. And nothing come from that conference, did it? A. No.

Q. And the parties left my room without agreeing? A. Yes.

Mr. McCLANAHAN.—That is very leading.

Mr. SUTRO.—Q. Well, did the parties agree in my room? A. No.

Mr. McCLANAHAN.—I object to these leading questions, your Honor.

(Testimony of C. A. Blumer.)

The COURT.—He has already covered that.  
[123]

Mr. SUTRO.—Very well, your Honor.

Q. I want to show you a letter and ask you if you recognize it.     A. Yes.

Q. You received that letter?     A. Yes.

Mr. SUTRO.—We offer this letter in evidence. It is a letter from S. G. Casad, R. N. S.—Mr. Slingerland's initials—to Mr. Blumer, dated October 7, 1919.

Mr. McCLANAHAN.—We object to the offer on the ground it is immaterial, irrelevant and incompetent, hearsay, a communication between parties that cannot possibly bind the libelant in this case.

Mr. SUTRO.—I submit to your Honor that it is after the letter of September 4th from Mr. Slingerland to these gentlemen that all communications regarding the vessel and the charter are to be made to Mr. Blumer.

The COURT.—To whom is the letter addressed?

Mr. SUTRO.—To Mr. Blumer.

The COURT.—The objection is sustained.

Mr. SUTRO.—I will withdraw it temporarily; it may be that perhaps I can introduce it through Mr. Slingerland.

The COURT.—That may be.

Mr. SUTRO.—I realize the rule, your Honor; I do not want to put in any improper evidence.

The COURT.—Anything between these parties would not bind the other side.

Mr. SUTRO.—Except this, your Honor: He had



(Testimony of C. A. Blumer.)

given notice on September 4th, well, I won't argue the matter now. That is all.

Cross-examination.

Mr. McCLANAHAN.—Q. Are you the agent under authority of the Vacuum Company?

A. The Vacuum Company, Pty., Ltd.

Q. Is your answer "Yes"?

A. The Vacuum Oil Company, Pty., Ltd., [124] not the Vacuum Company.

Mr. SUTRO.—That is a perfectly proper answer, Mr. McClanahan, because there are two companies, the Vacuum Oil Company, Pty., Ltd., and the Vacuum Oil Company.

Mr. McCLANAHAN.—Q. Well, add "Proprietary, Limited," to the question and then answer the question. A. Yes.

Q. Are you the agent under written authority?

A. Yes.

Q. When were you appointed under the written authority? A. Early in 1919.

Q. And where were you? A. In Australia.

Q. And you came here to undertake the agency?

A. Yes.

Q. Did you have any special authority for cancelling this charter-party in question?

A. It did not require it.

Q. Did you have any? A. No.

Q. You did it on your own authority?

A. I did it on the power that I held.

Q. Did your principals know that you were going to cancel this charter-party? A. Yes.

(Testimony of C. A. Blumer.)

Q. Did you advise them of that fact?

A. No, my principals didn't—

Q. You cancelled the charter-party without advising them of the cancellation, did you? A. No.

Mr. SUTRO.—Just a minute: I submit that that is immaterial. And the witness evidently did not finish his answer.

The COURT.—The question is answered.

Mr. SUTRO.—Well, I didn't get a chance to object.

Mr. McCLANAHAN.—I can't control your witness, you know.

Mr. SUTRO.—I am not blaming the learned counsel; far be it from me.

The COURT.—Proceed.

Mr. McCLANAHAN.—Q. Where are your principals?

A. There is [125] a director of the company in New York; the others are in Australia.

Q. With whom did you communicate?

A. I communicated with either, or both.

Q. In the matter of cancelling a contract made prior to your agency, with whom would you communicate?

Mr. SUTRO.—I object to that on the ground it is not material.

The COURT.—Sustained.

Mr. McCLANAHAN.—Q. Is it your idea, Mr. Blumer, that a notice of readiness of a ship to receive cargo has to be accepted? A. Certainly.

(Testimony of C. A. Blumer.)

Q. And it is your idea that that notice must be in writing? A. Not necessarily.

Q. Not necessarily?

A. No, but it must be accepted.

Q. It has to be accepted? A. Certainly.

Q. And it is of no value except accepted?

A. How would you date your demurrage if it was not?

Q. Answer my question, please.

Mr. SUTRO.—Just a minute: I object to the question on the ground it is calling for a hypothetical condition of facts; it is immaterial and of no consequence or importance in this case.

The COURT.—Sustained; I don't think it is in issue here. He did say that it was for the purpose of demurrage.

Mr. McCLANAHAN.—Q. You knew, Mr. Blumer, that the "Commerce" had proceeded to Point Orient for her cargo?

A. I don't know that I knew, only from hearsay, probably. I was not so particularly interested.

Q. Did you take a disinterested view of that matter?

A. It was time enough for me to take an interested view when she was tendered to me.

Q. So, until the notice of readiness was tendered to you, you [126] were not particularly interested? A. No.

Q. Then you want to on oath testify that you did not know when the "Commerce" went to Point Orient, do you?

(Testimony of C. A. Blumer.)

Mr. SUTRO.—The witness is under oath; I think the question is improper.

Mr. McCLANAHAN.—Well, I will strike out the part about being under oath.

A. What is your question?

Mr. McCLANAHAN.—Read the question.

(Question read by the reporter.)

A. No, I didn't infer that I did not know when she went.

Q. I am asking you if you knew when she went.

A. I told Mr. Kirchmann where the *cargo*, and I understood she was going up some time about the week end. He wanted to save towage expenses. I infer she went up. I didn't worry about whether she went, or not.

Q. As a matter of fact, you were not anxious to load her, were you? A. No particular anxiety.

Q. Prior to that, you had been after ships very eagerly, were you not, prior to September 16th?

Mr. SUTRO.—I object to the question on the ground that it is not material.

The COURT.—Sustained.

Mr. McCLANAHAN.—Q. Did you ever make any attempt to ascertain whether the schooner "Commerce" had proceeded to and had arrived at the dock that you designated for her to go to?

Mr. SUTRO.—I object to the question as immaterial, whether he did or not.

The COURT.—He may answer it.

A. I did not designate a dock where she was to go. I told the owner of the vessel where the cargo

(Testimony of C. A. Blumer.)

was. He could make his own [127] arrangements about going there. He wanted to save towage expenses, and as a business courtesy I wanted to assist him as much as possible. He must look after his own contract; it is my duty to look after my part of it.

Mr. McCLANAHAN.—Q. Was it your duty to designate a loading berth? A. Not necessarily.

Q. Not necessarily?

A. No, because he did not tender the ship.

Q. He did not tender the ship when you received the surveyor's certificate?

A. No, he did not tender the ship.

Q. And you did not know from that surveyor's report or certificate that the ship was ready for your cargo?

A. How could I, because she was on the dry-dock?

Q. Because it states so.

A. No, it does not; pardon me, it does not say she is ready for cargo.

Q. "Is fit to receive cargo."

A. That is a different thing.

Q. You didn't know when you received that certificate, that the vessel was proceeding to Point Orient as the designated port of loading?

A. I received that certificate after I had told Mr. Kirchman where the cargo was; that certificate merely indicated to me that the repairs were finished, and that the vessel was seaworthy.

Q. And fit?

(Testimony of C. A. Blumer.)

A. If she is seaworthy, she is fit.

Q. Fit for the receipt of your cargo?

A. It says "fit for perishable cargo."

Q. Fit for the cargo intended for this voyage?

A. Yes, fit for anything.

Q. For the intended voyage? A. Yes.

Q. Did you never learn, prior to cancelling the contract, that the vessel had proceeded to Point Orient? A. Oh, yes, I did, certainly. [128]

Q. When did you learn that?

A. When I got a letter from Mr. Slingerland telling me that she was in the road and what was the owner's intention. I said, "Refer to the owner, I don't know anything about it."

Q. As a matter of fact, you didn't want to know anything about it, did you?

A. Certainly, I was not anxious about it.

Q. Mr. Blumer, do you take the position that you have never designated a loading berth for the "Commerce," under the first charter-party?

A. I did not designate the lading berth.

Q. Did Mr. Slingerland have authority to designate it? A. No.

Q. This conversation which you had with Mr. Kirchmann, Sr., on the floor of the Merchants Exchange, was not a conversation which you intended to be a designation of the port of loading?

A. No, it could not be.

Q. It could not?

A. No. It is impossible for a man to tender a

(Testimony of C. A. Blumer.)

ship as ready when she is on the dry-dock; she could not be tendered and accepted on the dry-dock.

Q. I am not asking you about the dry-dock. I am asking you about the loading point. Did you intend that to be a designation of the loading berth?

A. No, I told him where the cargo was. I intended it as he suggested it, to save him two towages, to save him money.

Q. I don't quite get you: What were you trying to save him?

A. I was not trying to save him anything. I was trying to oblige him as an ordinary business courtesy. He was trying to save himself something.

Q. In what way?

A. How do I know? He said he didn't want to make two towages between the dry-dock and the wharf where the cargo was, and if I would tell him where the cargo was, he would make one towage of it. [129]

Q. Did not the contract provide for but two places of loading, San Pablo and Point Orient, and did not Mr. Kirchmann simply ask you at which of those two she was to go? A. No, sir.

Q. I would like to have you explain what he did ask you. He wanted to know where to take the ship, didn't he?

A. He wanted to know where the cargo was.

Q. So that he could take his ship there?

A. He could please himself about that. Yes, he wanted to save a towage, but I would not designate a loading berth until his vessel was ready. I could

(Testimony of C. A. Blumer.)

not accept a vessel as ready when she was on the dry-dock, so I didn't designate the berth. The previous ship will indicate that; you have put in a letter here of a certificate indicating when a vessel left Suva; I would not have anything to do with the vessel or indicate a port until he told me when she left Suva. He said he was ready; I said, "If you are ready, name when you left the last port." In this instance I obliged him.

Q. Your theory and your plan was to refrain from mentioning a place for the loading of that vessel until there had been a tender of the ship as being ready to receive the cargo?

A. No, not necessarily. There is a distinction between my designating the berth and my telling the owner of the ship where the cargo is. He can take his ship there and tender it. That is what I mean. I may be wrong, but that is my idea of it.

Q. What is your idea about the requirement of the charter-party?

A. That it shall be carried out.

Q. With reference to the designation of a berth, did not the charterer obligate himself to designate the berth?

Mr. SUTRO.—The charter speaks for itself.

A. The charter is there.

Mr. McCLANAHAN.—Q. Is it not a fact that between owner [130] and charterer it is the charterer's duty to designate a loading berth?

A. Yes.

Q. And it is then the duty of the owner to take



(Testimony of C. A. Blumer.)

his ship to that loading berth and be prepared and ready to receive the cargo, is it not?

Mr. SUTRO.—I object to the question on the ground that the charter is in evidence, and it speaks for itself.

The COURT.—The charter speaks for itself, and the law fixes the duty or duties of the parties to the charter-party.

Mr. McCLANAHAN.—I am trying to get the plan on which this man works, your Honor.

Mr. SUTRO.—I don't think that makes any difference.

The COURT.—We are not so much concerned about that.

Mr. McCLANAHAN.—Q. Do you want the Court to understand that no place for the loading of the "Commerce," under the first charter-party, has ever been designated?

Mr. SUTRO.—I object to the question on the ground it is immaterial, irrelevant and incompetent, and the charter-party speaks for itself.

The COURT.—I think he has already answered it.

Mr. McCLANAHAN.—I can't understand him, your Honor; I don't know how it is, but I can't understand just what his position is.

The COURT.—Then let him answer it again.

Mr. McCLANAHAN.—Q. Was that meeting on the Merchants Exchange intended for a designation of the loading berth?      A. No.

(Testimony of C. A. Blumer.)

Q. Was there ever a designation of the loading berth made by you?   A. No.

Q. Did the Standard Oil Company ever have any authority to designate a loading berth for the "Commerce"?

Mr. SUTRO.—I object to the question on the ground that the [131] witness cannot know whether the Standard Oil Company ever had, or not.

The COURT.—Let him answer the question, if he can.

Mr. SUTRO.—Q. Can you answer that question, Mr. Blumer? Did the Standard Oil Company ever have any authority to designate a loading berth?

A. Not from me.

Mr. McCLANAHAN.—Q. After you came here, that was a duty that you assumed under the charter-parties for your company, was it?

A. Well, I just took over the care of the company's business, and that would be incidental to it.

Q. Who was the man to designate a loading port for these vessels?

A. The person to whom the vessel was tendered upon giving notice of readiness; that is tendering.

Q. The notice of readiness to receive cargo must precede the designation of the loading berth?

A. I didn't say that; that is not necessarily so.

Q. Then I ask you again, who is it that must designate the loading berth?   A. The charterer.

Q. Did you represent the charterer in this matter of the "Commerce"?

(Testimony of C. A. Blumer.)

A. Yes, but I did not designate the loading berth.

Q. And in your view it never has been designated?

A. The ship never tendered. If an owner put his vessel at a loading berth before he tenders, that has nothing to do with me.

Q. This cargo for this vessel under this charter-party was to be taken on board from the port of Point Orient, wasn't it? A. Yes.

Q. And it was to be received from the Standard Oil Company at Port Orient, wasn't it? A. Yes.

Q. And when the vessel arrived there, the cargo was in the warehouse at Point Orient, wasn't it?

A. Yes.

Q. The cargo for that vessel? A. Yes.

Q. And she was finally loaded with that cargo under her second [132] charter-party?

A. I could not say.

Q. Did you know that the Standard Oil Company was furnishing the cargo for the "Commerce" under her first charter-party? A. Yes.

Q. You knew that? A. Yes.

Q. When did you first definitely know that the "Commerce" was at Point Orient?

A. The first definite word I had was the letter from Mr. Slingerland, saying that she was in the way, and asking if I could indicate the owner's intentions regarding the ship.

Q. What was the date of that notice?

A. I think that was about the—

Mr. SUTRO.—Here is the notice.

(Testimony of C. A. Blumer.)

Mr. McCLANAHAN.—Now, never mind that, Mr. Sutro.

Mr. SUTRO.—He can refresh his memory from it.

The COURT.—If he knows, he can answer the question.

Mr. SUTRO.—I submit that the letter is right here in court, and he can give the date from it.

The COURT.—Let him answer the question.

A. I think about the 7th or 8th of September.

Mr. McCLANAHAN.—Q. Of what?

A. The 7th or 8th of October.

Q. The 7th or 8th of October? A. Yes.

Q. And you did not know before then that the vessel was at Point Orient?

A. You asked me if I knew definitely; that is the only definite date that I can fix.

Q. Where did you think she was during all of that time?

Mr. SUTRO.—I object to the question as immaterial.

The COURT.—Sustained. I think you have already gone over that.

Mr. McCLANAHAN.—I am astounded at this. Perhaps my line of examination is to be criticised by your Honor, but— [133]

The COURT.—No, I would not intimate anything like that.

Mr. McCLANAHAN.—Q. Were you intending to hide yourself from the “Commerce” and all her movements?

(Testimony of C. A. Blumer.)

A. I think the "Commerce" was doing the hiding. I was in my office every day.

Q. She didn't want that favorable charter—is that what you think?

A. I say I was in my office every day.

Q. Mr. Blumer, do you know of any relationship between your company and the Standard Oil Company? A. No.

Q. You do not?

A. Only that of buyer and seller.

Q. You don't know whether they have interlocking directors?

Mr. SUTRO.—I submit that that is a very improper question, it has no bearing in this case.

The COURT.—Sustained.

Mr. McCLANAHAN.—Q. Is the Standard Oil Company furnishing case goods for your company now?

A. I suppose if we wanted them we might be able to get them; I don't suppose they would refuse to sell if we wanted to buy.

Mr. SUTRO.—Q. The same as any other buyer, I suppose? A. Yes.

Mr. McCLANAHAN.—Q. You knew that there had been a very great decline in freight rates?

A. Yes, certainly.

Q. And when you made the second charter-party, it was made at the then prevailing market rates, wasn't it? A. Yes.

Q. And when you made the first charter-party—you didn't make that first charter-party, did you?

(Testimony of C. A. Blumer.)

A. No.

Q. You just found it here among the archives of your company, or did they send it to you?

A. I brought a copy of it with me, or else I received it here; I would not swear to that, when I got it. I held a copy of it.

Q. Did you receive it from the Standard Oil Company?

A. I might have. I received some papers from them. I picked up—[134] the papers of ours that they were holding in connection with some of the vessels; I think that charter was one of them.

Q. Your ground for cancelling this contract was that you had no notice of the ship's readiness to receive cargo? A. Absolutely.

Q. Are you quite clear, Mr. Blumer, in your recollection of the conversation of September 16th?

A. Oh, yes.

Q. You have a good memory, have you?

A. Yes, a good memory for that occasion.

Q. Why for that occasion?

A. Well, because it referred to some accounts which I had written about on several occasions, and Mr. Kirchmann got annoyed and went out and took the captain with him, and slammed the door, and so I remember it, and nothing was said about anything else.

Q. He said nothing about the "Commerce"?

A. No.

Q. Although at that time you had been advised

(Testimony of C. A. Blumer.)

by the senior Kirchmann that he would like to know where this cargo was?

A. And I had already told him.

Q. And you had already told him?     A. Yes.

Q. And you were not interested further at that time?

A. Well, you see, the "Commerce" was only one boat, and I had lots of other business to attend to. I would not be thinking of the "Commerce" all the time.

Q. You are a very busy man?

A. Well, at times.

Q. Did you cancel any other contracts?

Mr. SUTRO.—I object to that as absolutely immaterial.

The COURT.—Sustained.

Mr. McCLANAHAN.—I think that is all.

Redirect Examination.

Mr. SUTRO.—Q. Mr. Blumer, the demurrage notices are given from day to day, aren't they, when demurrage is called for?

A. When demurrage becomes due— [135]

Mr. McCLANAHAN.—Hold on: I object to that as immaterial and irrelevant.

The COURT.—Sustained.

Mr. SUTRO.—I note an exception to the ruling.

Q. The letter which you referred to on your cross-examination, and which you said was the letter you received from Mr. Slingerland, dated on or about October 7th, is this the letter to which you referred?

(Testimony of C. A. Blumer.)

A. Yes.

Mr. SUTRO.—I offer this letter in evidence.

Mr. McCLANAHAN.—Objected to as immaterial, irrelevant and incompetent.

The COURT.—Sustained.

Mr. SUTRO.—If your Honor please, that was brought out on their cross-examination.

Mr. McCLANAHAN.—It was simply for the purpose of refreshing his memory as to a date.

Mr. SUTRO.—Exception. That is all.

**Testimony of John B. Blair, for Respondent.**

JOHN B. BLAIR, called for the respondent, sworn.

Mr. SUTRO.—Q. Mr. Blair, what is your business? A. Shipping and commission.

Q. How long have you been in the shipping business? A. About 20 years.

Q. Here in San Francisco?

A. In San Francisco.

Q. Are you familiar with a clause in charter-parties giving the charterer the right to cancel a charter? A. Yes.

Q Is that right a valuable right?

Mr. McCLANAHAN.—That is objected to as immaterial.

The COURT.—Sustained; anybody would know that. [136]

Mr. McCLANAHAN.—I will admit that it is valuable.



(Testimony of John B. Blair.)

Mr. SUTRO.—Very well, we will take that admission.

Q. Are you familiar with the matter of giving notices for demurrage in this port, when notices are given?

Mr. McCLANAHAN.—I object to that as immaterial.

The COURT.—He can answer the question; I don't see that it is immaterial.

Mr. SUTRO.—I will explain it to your Honor. We claim—

The COURT.—I don't see why it is material as a collateral matter. I permitted the other answers from the other witness under cross-examination because he is one of the parties, and as bearing on the credibility of his testimony. It is a collateral matter. I don't see that it is material.

Mr. SUTRO.—Very well. That is all, Mr. Blair.

Mr. McCLANAHAN.—No cross-examination, Mr. Blair.

### **Testimony of R. N. Slingerland, for Respondent.**

R. N. SLINGERLAND, called for the respondent, sworn.

Mr. SUTRO.—Q. What is your business, Mr. Slingerland?

A. I am manager of the order and distributing department of the Standard Oil Company.

Q. Did you have any negotiations with Sanders & Kirchmann, or with Mr. Wolff, representing

(Testimony of R. N. Slingerland.)

Sanders & Kirchmann, for the chartering of a number of schooners in 1918?     A. Yes.

Q. About when was that?

A. In the latter part of the year.

Q. Those negotiations were consummated by a letter that was written to you and which has been offered in evidence here and marked Libellant's Exhibit No. 15: Is that a fact?     A. Yes.

Q. And that letter is dated November 19, 1918?

A. Yes, sir.

Q. And the ten charters concerning which testimony has been [137] given here are all contained in this letter?

A. I would not say that the ten charters were in that letter, Mr. Sutro; I think they only involve five ships for one trip; the rest of the charters were consummated in other letters.

Q. But the ten voyages were by those five ships?

A. Yes.

Q. There has been offered in evidence here a letter dated September 4, 1919, from yourself to Sanders & Kirchmann, referring them to Mr. Bluner for all matters in connection with charters of the Vacuum Oil Company: Do you recall such a letter?     A. Yes.

Q. Is that a copy of the letter—it is marked Respondent's Exhibit "A."

A. Yes, that is a copy.

Q. From that time on did you have any dealings with Sanders & Kirchmann, or Wolff, Kirchmann,

(Testimony of R. N. Slingerland.)

& Co., concerning the schooner "Commerce," until some time along in October?   A. No.

Q. I want to show you a letter and ask you if you recognize it.   A. Yes.

Mr. McCLANAHAN.—I don't see the materiality of this letter, your Honor.

Mr. SUTRO.—This is a letter dated October 10, 1919, signed S. G. Casad, with the initials "R. N. S.," and addressed to Mr. Henry Kirchmann, Jr.

Q. Did you write that letter?

A. I dictated it; yes.

Mr. SUTRO.—This letter reads as follows:

**Respondent's Exhibit "I."**

(Letter-head of Standard Oil Company.)

"San Francisco, Cal., October 10, 1919.

In replying please refer to File "S."

ORIGINAL.

Mr. Henry Kirchmann, Jr.,  
212 American Nat'l Bank Bldg.,  
San Francisco, California.

Dear Sir: [138]

Schooner 'COMMERCE.'

In your absence I spoke to Mr. Wolff some time ago regarding the probable necessity of having to shift this vessel from the berth she is now occupying at our Point Orient Wharf to another berth where she will not interfere with operations.

We now need the berth which this vessel is occupying, for other purposes, and we understand you authorize us to shift her. Since there is no crew

(Testimony of R. N. Slingerland.)

aboard, and as we understand that you desire to save the expense of supplying men and tugs from San Francisco, we are willing to undertake, without any responsibility, the work of shifting the vessel—you to pay us our out-of-pocket expenses and absolve us from all liability in case of mishap caused to or by the vessel. We guarantee that the cost of shifting the vessel will not exceed \$50.00, and if you shall hereafter, within a reasonable time, desire to have her shifted back, we will do so upon the same terms for the same price.

Kindly signify your acceptance of the foregoing by signing duplicate of this letter and return to bearer.

Yours very truly,

S. G. CASAD, R. N. S.

RNS:T.

Accepted:

WOLFF, KIRCHMANN & CO., Inc.,

A. E. WOLFF,

President."

(The letter was marked Respondent's Exhibit "I.")

Q. Was the "Commerce" moved in pursuance of that letter? A. Yes.

Q. And was the bill rendered the owners of the "Commerce" for the moving?

A. There was a bill rendered, yes.

Mr. McCLANAHAN.—We will admit that there was.

Mr. SUTRO.—The bill is dated October 11th.

(Testimony of R. N. Slingerland.)

Q. I will show you a bill and ask you if you recognize it as a copy of the bill? A. Yes.

Mr. McCLANAHAN.—What is the materiality of this?

Mr. SUTRO.—The materiality of it is, Mr. McClanahan, now [139] that you have asked me, to show that this vessel, on October 10th, lying at the wharf, there, doing nothing, was in the way, and we told the owners she was in the way, and asked if she could be moved, and if they would pay the expense, and they said yes, that she never at any time while laying there asked for any cargo, and was never ready to receive any cargo, that there was a stevedores' strike on, and she never did load.

Mr. McCLANAHAN.—You say that it shows all that?

Mr. SUTRO.—No, it doesn't show all that, but you asked me the materiality of it, and that is it.

The COURT.—Proceed.

Mr. SUTRO.—This reads as follows:

**Respondent's Exhibit "J."**

(Billhead of Standard Oil Company.)

COPY.

San Francisco, Cal., Oct. 11th, 1919.

Wolff, Kirchmann & Co.,

495 California St.,

San Francisco, Calif.

To services of our tug 'Standard No. 1' shifting your schooner 'Commerce' from Berth #3 to Berth #2 at Pt. Orient.....\$50.00"

(The document was marked Exhibit "J.")

(Testimony of R. N. Slingerland.)

Q. And that bill was paid? A. Yes.

Q. On September 4th, you had written to Sanders & Kirchmann to get all the information concerning the "Commerce" and these other boats from Mr. Blumer.

Mr. McCLANAHAN.—I object to that as leading.

Mr. SUTRO.—Well, the letter speaks for itself.

The COURT.—Proceed.

Mr. SUTRO.—Q. Why did you write to Kirchmann instead of Mr. Blumer about the "Commerce"?

A. Do you want to know why I took it up with Kirchmann?

Q. With Henry Kirchmann, Jr., instead of Mr. Blumer.

A. I had previously taken it up with Mr. Blumer, and— [140]

Q. You say you had previously taken it up?

A. Yes.

Q. How did you take it up with him?

A. I wrote him a letter.

Q. Look at this letter and see if you recognize it.

A. Yes.

Mr. McCLANAHAN.—Is that the same old letter?

Mr. SUTRO.—Yes.

Mr. McCLANAHAN.—I object to it as hearsay, as immaterial, irrelevant and incompetent, as not binding on the libelant in this case.

(Testimony of R. N. Slingerland.)

The COURT.—Sustained; it is not binding on the parties.

Mr. SUTRO.—Counsel has a very violent objection to this letter. It is a very significant letter. We note an exception.

Mr. McCLANAHAN.—Now, I am perfectly willing to have the Court read the letter.

Mr. SUTRO.—Very well.

Mr. McCLANAHAN.—Sure, let the Court read it; I am perfectly willing.

The COURT.—I don't care anything about it; I am satisfied that it is immaterial.

Mr. McCLANAHAN.—All right, your Honor, but I was charged with being afraid of it.

Mr. SUTRO.—Oh, no, not that you were afraid of it. I said it was a very significant letter. I don't think you are afraid of anything.

The COURT.—Proceed.

Mr. SUTRO.—Q. Mr. Slingerland, do you know whether, up to October 10th, or, say, from September 16th on to October 11, 1919, there was a stevedores' strike on in this harbor? A. Yes.

Q. What about the rates in the charter-party, this charter for which the cancellation notice was given, were they high or low?

A. They were the highest rates we ever paid for a ship of that [141] kind.

Q. And as to the character of the cargo, taking on-deck and under-deck cargo, had that ever been done before?

A. Oh, no; that was new to us, absolutely.

(Testimony of R. N. Slingerland.)

Q. At the time that the cancellation notice was given, had the rates fallen?

A. Why, yes, the rates went down very rapidly.

Q. Did anybody, on behalf of the "Commerce," from the time that she went up to Point Orient on September 16, 1919, ever ask you for any cargo for her?

A. None whatever; no, there was no demand made for cargo.

Q. Was any notice for any demurrage ever served on you for the "Commerce" at any time?

A. None whatever.

Q. Did you ever ask Mr. Kirchmann when the "Commerce" was on the dry-dock how she was getting along? A. No, sir.

Q. When the freight was paid on the second charter, that was paid for the account of the Vacuum Oil Company, was it?

Mr. McCLANAHAN.—Please don't lead the witness.

Mr. SUTRO.—Q. Well, for whose account was it paid? A. Paid for account of the charterers.

Q. The charterers being whom?

A. The Vacuum Oil Company, Pty., Ltd.

Q. Did you ever speak to Mr. Wolff about the "Commerce" when she was on the dry-dock, and ask him when she would be ready to go up?

A. No, sir.

Q. After you had sent that letter of September 4th, will you state whether or not the business had been turned over by you to Mr. Blumer?



(Testimony of R. N. Slingerland.)

A. I don't understand you.

Q. After you wrote to them the letter of September 4, advising them that Mr. Blumer was to be looked to regarding all business for the Vacuum Oil Company, Pty., Ltd., did you have anything more to do with that business?

A. No, sir; I was through, [142] absolutely, with all the Vacuum Oil Company's affairs.

Q. Until the letter of October 11th? A. Yes.

Cross-examination.

Mr. McCLANAHAN.—Q. You were through with the Vacuum Oil Company's affairs, you say, until the letter of October 11th?

A. Until the letter of what?

Q. Until the letter of October 11th.

Mr. SUTRO.—October 10th.

Mr. McCLANAHAN.—Q. That is your answer, is it?

A. I am still through with them; I have nothing to do with them, whatsoever.

Q. The letter of September 4th finished your connection with the Vacuum Oil Company?

A. No, sir; that didn't finish my connection with them. I was through with the handling of the Vacuum Oil Company's affairs as soon as Mr. Blumer appeared on the scene to take over the affairs of his company.

Q. Why did you pay the freight on the second charter?

A. That was one of the conditions of the sale to

(Testimony of R. N. Slingerland.)

the Vacuum Oil Company. That frequently happens; we advance money for different people.

Q. In paying that freight, you deducted a commission, didn't you?

A. According to the terms of the charter-party.

Q. Who received that commission?

A. Let me see—I am not clear. I think there were two commissions under that charter-party.

Q. Yes, one on the lumber, and one on the case oil.

A. But there were two commissions paid by different principals.

Q. One was paid here and one down below?

A. There was an address commission, if I am not mistaken, and there was a commission payable to the ship broker, here, so called.

Q. Didn't you receive a commission, the Standard Oil Company?     A. Not a cent; no, sir.

Q. Who did receive it?

A. Nobody received it, in fact, no. [143]

Q. Wasn't it deducted from the freight payment?

A. The charter-party was so worded that all deductions for commission resulted in a net freight. I remember that very clearly, because I negotiated the charter myself.

Q. Wasn't that deducted—the 2½% commission?

A. I am pretty sure the address commission was deducted, and the commission to the ship broker, both of them.

Q. Both deducted?     A. Yes.

Q. You say this was one of the highest charters made on this coast?

(Testimony of R. N. Slingerland.)

A. I didn't say that; no, sir.

Q. What did you say?

A. I said it was the highest price charter we ever paid.

Q. You paid the going market price, though?

A. Do you mean for the case oil, or for the whole ship?

Q. For the "Commerce."

A. Do you mean for the ship, or for the character of the goods: What do you mean?

Q. Well, what do you mean when you say it is the highest you ever paid?

A. I don't know how to answer your question; do you mean for the ship, or for the character of the goods?

Q. I am talking about the freight, which I supposed you were talking about when you said it was the highest that was ever paid. Was that the market freight at that time?

A. You mean for the case oil?

Q. Yes.      A. Yes.

Q. And for the lumber?

A. I am not prepared to say on that, because lumber is not our business. I had to pay that lumber freight to get the ship.

Q. You are not prepared to answer my question?

A. No, sir. I was told that that was the going rate. I am not in the timber business, I don't know anything about it, but I had to pay the [144] lumber freight to get the ship.

Q. Mr. Slingerland, prior to this trouble, is it not

(Testimony of R. N. Slingerland.)

a fact that vessels, under the charters that you made for the Vacuum Oil Company, went to your loading ports and were there loaded with the cargo called for by the respective charter-parties, and performed their contracts without any trouble?

Mr. SUTRO.—I object to the question as immaterial and irrelevant; it does not bear on any issue in this case.

The COURT.—Let it go in the record.

Mr. SUTRO.—Exception. A. Yes.

Mr. McCLANAHAN.—Q. Do you know why you sent the letter of September 4th, cutting loose from the Vacuum Oil Company, Pty., Ltd.?

A. Only to put right in the minds of the Messrs. Kirchmann and Mr. Wolff, and all of them in connection with his association that I was no longer interested in the Vacuum Oil Company, Pty., Ltd. affairs in relation to their unfinished business on charter-parties that were yet to be completed.

Q. Did you know at that time that Mr. Blumer intended, if he could, to cancel the charter-party?

A. No.

Q. That was not one of the reasons why you decided to have nothing more to do with that charter?

A. Oh, no. I was through, as I testified before, when Mr. Blumer came here to take over the duties of the Vacuum Oil Company, Pty., Ltd.

Q. Do you know when the "Commerce" went to the Point Orient dock?

A. Only from what I heard here, about September 16th, yes.

(Testimony of R. N. Slingerland.)

Q. If you had been asked to designate the loading berth for the "Commerce," would you have designated it?

Mr. SUTRO.—I object to that question as a hypothetical question not predicated on any facts in the case.

The COURT.—Sustained. [145]

Mr. McCLANAHAN.—Q. Did you designate any loading berth for the "Commerce"? A. No.

Q. Did your office? A. No.

Q. Who would have authority, in your office, to do it?

A. There would be nobody in my office who would have authority to do it.

Q. Was not the Point Orient dock the proper berth for loading that vessel?

A. It was one of the regular places of delivery, yes.

Q. Under that charter-party? A. Yes.

Q. Do you know whether you had your cargo ready to load on her?

A. It was ready; we were all prepared to deliver that cargo to the "Commerce."

Q. Why didn't they deliver?

A. The ship never called for it; she just lay up there doing nothing.

Q. She was there?

A. I know, but how are you going to put cargo aboard when the ship is not there ready to fulfill its charter-party; it had no means of getting the stuff aboard. We only had to move it to ship's tackles.

(Testimony of R. N. Slingerland.)

Q. Wasn't she there on September 16th?

A. Yes.

Q. And you knew she was there?      A. Yes.

Q. And you knew she had this wonderful charter-party?      A. Well, what of it?

Q. What should she have done?

A. If she was ready, she would have called for the cargo, wouldn't she?

Q. Is that the way that all the vessels do, politely ask for cargo?

A. No vessels ever come up there under the same circumstances as the "Commerce" did; they all come up there ready to load.

Q. Why wasn't she ready to load?

A. I don't know.

Q. As a matter of fact, Mr. Slingerland, wasn't she ready to load?      A. I don't know that. [146]

Q. All you know is she didn't demand the cargo?

A. Absolutely, and I will say—

Q. And you don't know whether she was ready to load, or not?      A. No.

Mr. SUTRO.—Q. What were you going to say?

A. I say we were all ready to deliver her the cargo.

Mr. McCLANAHAN.—Q. And if she simply said: "Gentlemen, I demand cargo," she would have got it?

A. Because I had orders to give it to her.

Q. And you were simply waiting for her to demand it: Is that it?      A. Certainly.

Q. If you had orders to give it to her, and she

(Testimony of R. N. Slingerland.)

had demanded it, your orders would have been carried out by delivering the cargo at the ship's tackles?   A. Yes, sir.

Q. Did your orders to deliver the cargo specify the brands to be delivered?   A. Yes.

Q. And those brands the ship owner didn't know anything about, did he?   A. Oh, no.

Q. Was not the "Jewett" loading at the time the "Commerce" went up there?

A. Yes; there were several vessels we loaded during the strike, but I don't know just which ones they were.

Q. The "Commerce" could have been loaded during the strike; there was no trouble about that, was there?

A. I am not saying whether she could, or not, I don't know.

Q. The "Jewett" had stevedores?   A. Yes.

Q. Don't you know that you begged Mr. Wolff not to send non-union stevedores up to the "Commerce," because you had union stevedores loading the "Jewett"?

A. No, that is not so, that is not so.

Q. That would have been an unfortunate thing to do, wouldn't it?

Mr. SUTRO.—I object to the question as incompetent, whether it would have been an unfortunate thing to do, or not.

A. Well, that is not so. [147]

Mr. McCLANAHAN.—I withdraw the question.

Q. Mr. Slingerland, as you understand it, then,

(Testimony of R. N. Slingerland.)

the only thing that stood in the way of carrying out the contract was the failure to demand the cargo?

A. That is the only thing under the sun that I know of, Mr. McClanahan.

Q. By "demand," I mean make a verbal or written demand? A. No, I would not say that.

Q. What kind of a demand do you mean?

A. I would not pay any heed to a demand for cargo if a ship was not in a position to take it on board; I would not say that it was a *bona fide* demand for cargo.

Q. You didn't know she was not in a position to take on cargo, did you?

A. Yes, I did know it, because I received complaints from our people up at the refinery that the "Commerce" was occupying a berth there, and we were constantly putting goods on lighters for other ships that came up there for loading.

Q. That was in October?

A. That was after she got up there and lay there a couple of weeks. I think the complaints came in after she was there an undue length of time.

Q. But I mean when she went there first she was ready to receive cargo?

A. You mean as far as the ship was concerned?

Q. Yes. A. Yes, I suppose so.

Q. Her holds were cleaned out and ready?

A. I suppose so.

Q. And her hatches were off?

A. But I don't know whether she was ready to work.



(Testimony of R. N. Slingerland.)

Q. What do you mean by being ready to work?

A. To take on cargo.

Q. How do you mean?

A. How are you going to take cargo when there is no means to put it aboard?

Q. Do you refer to stevedores?

A. Stevedores or any other means.

Q. Didn't she have the same means when she loaded under the second charter-party as she had when she was at the dock on September [148] 16th? A. No, that time she had stevedores.

Q. Then the only thing she lacked was stevedores; is that the only thing that differed in her condition between the second charter and on September 16th, the absence of stevedores?

A. The absence of being able to load the cargo. I presume that was principally because of the stevedores.

Q. You can think of nothing else that she lacked?

A. I can think of nothing else. She was not ready to work.

Q. Because she had no stevedores? A. Yes.

Q. But otherwise she was in a position to work?

A. If she was in a position to work, we would have delivered the cargo.

Q. Do you remember some time around September 18th or 20th, 1919, having a telephone conversation with Mr. Wolff with reference to the "Commerce," in which it was mutually understood over the telephone that it would be inadvisable to employ union men in loading the "Commerce"—no, I

(Testimony of R. N. Slingerland.)

mean non-union men in loading the "Commerce," because the "Jewett" was loading with union men, and that you said to Mr. Wolff, "For God's sake, Wolff, don't send non-union men up here until the 'Jewett' is through. Stevenson is working her with union men, and there would be trouble if at the same time you had non-union men on the "Commerce' at the same berth"?

A. I was handling the situation with all ships along those lines at that time; in other words, when a union gang got away, we would take on a ship that wanted to work with a non-union gang. The reason should be very apparent to you, that we didn't want to cause a fracas or a mix-up on our property between non-union and union men. If Mr. Wolff says that he took that up with me, it probably might have happened, because it was a daily occurrence with everybody. That is the only significance to that.

Q. If Mr. Wolff says that that is true, you would not contradict it?

A. I would not contradict it. I was doing it with everybody. [149] I remember the incident constantly coming up.

**Testimony of C. A. Blumer, for Respondent  
(Recalled).**

C. A. BLUMER, recalled for respondent.

Mr. SUTRO.—Q. There has been offered in evidence a surveyor's report. Was this letter received by you with that report? A. Yes.

(Testimony of C. A. Blumer.)

Mr. SUTRO.—I offer it in evidence. It is from Sanders & Kirchmann, dated September 16, 1919, and reads as follows:

**Respondent's Exhibit "K."**

(Letter-head of Sanders & Kirchmann, Inc.)

“San Francisco, Cal., Sept. 16th, 1919.

Mr. C. A. Blumer,  
Mills Building,  
San Francisco.

Dear Sir:

Enclosed herewith you will find surveyor's report on the Schr. 'Commerce.'

Yours very truly,  
SANDERS & KIRCHMANN, INC.  
By H. KIRCHMANN,  
Secretary.”

(In rubber stamp: “Sep. 18, 1919.”)

(The document was marked Respondent's Exhibit “K.”)

Q. Mr. Blumer, did Mr. Kirchmann, Sr., ever say anything to you about using union or non-union labor on any of their vessels?

A. I asked him why he was not completing the “Luzon,” because she had loaded for us and was lying at the timber wharf and not working, and—

Q. When was that?

A. I think she finished loading the case oil about the 11th or 12th of September, 1919, and she went over to the timber wharf and did not start to work.

Q. And what did he say?

(Testimony of C. A. Blumer.)

A. He said he did not wish to use non-union labor.

Q. What else did he say?

A. He just left the vessel lying there. [150]

Q. What else did he say about the labor: Did he tell you why he didn't want to?

A. He said if he used any non-union labor here he probably might have trouble with labor in New Zealand, which was all union labor.

Mr. SUTRO.—That is all.

Mr. McCLANAHAN.—No questions.

Mr. SUTRO.—That is our case. As a part of the respondent's case, your Honor, it was alleged that the Vacuum Oil Company was a corporation under the laws of the United States. That is a mistake. It is an Australian corporation. I have stipulated to that effect with counsel as follows:

**Respondent's Exhibit "L."**

"It is hereby stipulated by and between the respective parties to the above-entitled action, as a fact to be used as evidence upon the trial of said action, that Vacuum Oil Co. Pty., Ltd., respondent in the above-entitled action, is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Australia."

I will present that stipulation as an exhibit.

(The document was here marked Respondent's Exhibit "L.")

The COURT.—Very well.

Mr. SUTRO.—That is our case.

**Testimony of A. E. Wolff, for Libelant (Recalled in Rebuttal).**

A. E. WOLFF, recalled for libelant in rebuttal.

Mr. McCLANAHAN.—Q. Mr. Wolff, are you familiar with the stevedoring situation in September, 1919, at the time that the “Commerce” went to the Point Orient Dock for loading?

A. Yes, sir.

Q. Would it have been possible to have secured stevedores to have loaded the “Commerce” at that time? A. Yes.

Q. Do you remember having a conversation over the telephone [151] about that time with Mr. Slingerland, with reference to stevedoring the “Commerce”? A. I do.

Q. State to the Court the substance of that conversation as you remember it.

A. In essence, I told Mr. Slingerland that Sanders & Kirchmann, the owners, naturally wanted to work the ship with non-union men if they could. This was just shortly after the ship went up there. The “Jewett” was working then with non-union men. Slingerland, over the telephone, said—he was quite excited—in essence, “For God’s sake, Wolff, don’t send non-union men up there while the ‘Jewett’ is there. Stevenson is working her with union men, and we don’t want to have friction on our property.” I asked Mr. Slingerland—I am not sure whether it was in the same conversation or not, whether he had any preference, whether they wanted to force us with union men, and he said no,

(Testimony of A. E. Wolff.)

that it was perfectly in order to wait.

Q. Was the "Jewett" being loaded with union or non-union men?

A. The "Jewett" was being loaded with union men.

Q. With union men? A. With union, men, yes.

Q. And you could have secured non-union men?

A. We could have secured non-union men.

Cross-examination.

Mr. SUTRO.—Q. The "Philippine" was here in the harbor at that time, was she not?

A. I think she was, but I was not handling her.

Q. But she was one of the Sanders & Kirchmann vessels, wasn't she?

A. Yes, but I was not handling them all.

Q. I didn't ask you whether or not you were handling them, or handling them all. If she was lying in the harbor, why didn't you discharge her with non-union labor?

Mr. McCLANAHAN.—The witness has testified he was not handling her; I object to the question as immaterial, irrelevant [152] and incompetent, and not proper cross-examination.

The COURT.—Sustained.

Mr. SUTRO.—Q. The "Samar" was one of the vessels of Sanders & Kirchmann: She was in the harbor, wasn't she?

A. Yes, with a cargo for Wolff, Kirchmann & Co.

Q. She was lying idle, too, wasn't she?

A. No. I heard Mr. Slingerland's testimony on that point, and my memory—I will have to check it

(Testimony of A. E. Wolff.)

up from the office records, but my memory is that we discharged her at great expense with non-union men, having to pay for guards to protect them; that is my memory, but I want to check it up as to whether it was the "Samar," or one of the other ships.

Q. You don't know that?

A. I don't know positively, but I believe it was the "Samar."

Q. The "Luzon" was lying at the timber wharf, wasn't she?     A. That I don't know.

Q. She was one of Sanders & Kirchmann's vessels?

A. Yes, but I had no interest in her cargo.

Q. Had you not negotiated her charter?

A. Yes, but no question came up that called for my intervention. She had progressed far enough with loading so that there was no question at all from my side of the house.

Q. She did not take on the lumber cargo?

A. That I don't know.

Q. You don't know whether she did, or not?

A. No, I don't know that.

Q. You don't know that the completion of her loading with non-union labor could have been performed?

A. I don't know that it was not performed.

Q. This conversation that you had with Mr. Slingerland was when?

A. As nearly as I can place it, it was within two or three days after the "Commerce" went up.

(Testimony of A. E. Wolff.)

Q. About September 18th? A. To 20th. [153]

Q. In other words, it was about two weeks after Mr. Slingerland had advised you to communicate with Mr. Blumer about all these matters?

A. He had not advised me, he had advised Sanders & Kirchmann.

Q. You draw a distinction, then, so far as the non-union and union labor business is concerned, between notices received by you and notices received by Sanders & Kirchmann?

Mr. McCLANAHAN.—I object to that as argumentative.

The COURT.—The witness has stated what he understands the fact to be.

Mr. SUTRO.—Very well, your Honor, that is all.

**Testimony of Henry Kirchmann, Jr., for Libelant  
(Recalled in Rebuttal).**

HENRY KIRCHMANN, Jr., called for libelant in rebuttal.

Mr. McCLANAHAN.—Q. Were you familiar with the stevedore situation when the “Commerce” went to Port Orient A. I was.

Q. Were stevedores available to have loaded the “Commerce” at that time?

A. Stevedores were available.

Cross-examination.

Mr. SUTRO.—Q. You mean non-union stevedores?

A. Both union and non-union were available.

Q. Stevedores, both union and non-union being



(Testimony of Henry Kirchmann, Jr.)  
available, and the "Commerce" being there from September 16th on, Sanders & Kirchmann, Inc. never made any demand on the Standard Oil Company, or on Mr. Blumer, for any cargo for the "Commerce"?

A. We did make demand for cargo.

Q. You tendered her, you say?

A. We tendered the boat, and made a demand.

Q. But after that you never made any demand for cargo?

A. Our captain was asking for cargo daily.

Q. You didn't hear him ask up there, did you?

A. No, but that [154] was his business, and he was instructed to ask, and he telephoned us that he asked for it.

Q. He telephoned to you?      A. Yes.

Q. Who did he ask?

A. I don't understand you.

Q. You say he telephoned to you that he was asking daily?      A. For cargo; yes.

Q. Did he telephone to you daily?

A. He didn't telephone us daily, but in his conversation when he did telephone he said he had been asking for cargo daily.

Q. And do you mean to say your captain told you he was asking for cargo daily, and he got none, and you never communicated with Mr. Slingerland, or Mr. Blumer?

A. Yes, we did, we asked for cargo, from the Standard Oil Company; when we were talking with them we asked for cargo.

(Testimony of Henry Kirchmann, Jr.)

Q. I asked you before, when you testified on your cross-examination, if you had ever asked anybody, after she got up there, for any cargo, or sent in any demurrage bill, and you said no.

A. We sent no demurrage bill, but we had asked for cargo.

Q. Who did you ask?

A. The Standard Oil Company.

Q. Who?

A. I don't know who in the Standard Oil Company.

Q. Did you do the asking?

A. We telephoned; yes.

Q. I say, did you do it?      A. Yes.

Q. To whom did you telephone?

A. The Standard Oil Company.

Q. Don't you know to whom you telephoned?

A. I don't know if it was Mr. Peas, or Mr. Moore, or Mr. Slingerland, or who it was.

Q. And you never followed it up by a written complaint?

A. We were waiting for the Standard Oil Company's next move, to offer us cargo, and then we would go and get stevedores.

Q. Did your captain tell you who he was asking up there?      A. Yes.

Q. Who did he say he was asking?

A. Jones and Connolly. [155]

Q. Jones and Connolly?      A. Yes.

Q. They have gone. You know that the ship was

(Testimony of Henry Kirchmann, Jr.)  
shifted and that a bill of \$50 was paid for that shifting, don't you?

A. I believe that was after the letter of cancellation reached us.

Q. It was after the letter of cancellation reached you?

A. I think it was either on that day or the day after.

Q. You are mistaken. It was on the 10th, and the bill was paid on the 11th. The letter is dated the 10th, and it was accepted and returned by bearer. I will show you the letter. It is dated October 10th. Why did you agree to the shifting of this vessel, and to pay \$50 to have it done if she was lying there to get a cargo, and make no written complaint, or any complaint?

A. October 10th is one of the dates when I do not believe I was in town; that was during my absence, as that letter bears out.

Mr. SUTRO.—That is all.

Mr. McCLANAHAN.—That is our case.

(By consent of counsel, the cause was thereupon submitted upon briefs to be filed in 5, 5 and 3.)

[Endorsed]: Filed Jun. 13, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [156]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COMPANY  
et al.,

Libelants,

vs.

VACUUM OIL CO., P'T'Y, LTD.,

Respondent.

**(Deposition of Charles Anderson, Taken on Behalf  
of Libelants.)**

BE IT REMEMBERED, that on Tuesday, September 7, 1920, pursuant to stipulation of counsel hereunto annexed, at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Charles Anderson, a witness called on behalf of the libelants.

William Denman, Esq., appeared as proctor for the libelants, and Alfred Sutro, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth the whole truth and nothing but the truth

in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above named witness may be taken *de bene esse* on behalf of the libelants, at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San [157] Francisco, State of California, on Tuesday, September 7, 1920, before Francis Krull, a United States Commissioner, for the Northern District of California, and in shorthand by Charles R. Gagan.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said depositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.) [158]

CHARLES ANDERSON, called for the libelants, sworn.

Mr. DENMAN.—Q. Captain, how long have you been at sea? A. About 42 years.

Q. In and out of this port?

A. About 37 years in and out of San Francisco.

Q. What character of ships? A. All classes.

(Deposition of Charles Anderson.)

Q. Do you remember the schooner "Commerce"?

A. The schooner "Commerce"; yes, sir.

Q. Were you master of her in the fall of 1919?

A. Yes, sir; I took charge of her in September.

Q. Where did you take charge of her?

A. In San Francisco, or, rather, in Alameda.

Q. Do you remember a voyage on the "Commerce" finishing in San Francisco Bay in the month of September, 1919?     A. Yes, sir.

Q. Do you remember discharging your prior cargo?     Yes, sir, I do.

Q. What did you do after you had discharged the cargo, with reference to the ship herself?

A. We went over to the Alameda Shipyards, the Bethlehem Shipyards, to repair the ship.

Q. After the ship was finished, where did you go?

A. We went to Point Orient.

Q. What was the condition of your holds on arrival up there?

A. The condition of the holds was that they were swept clean and dunnage laid for a new cargo.

Q. Were the holds in condition to take on a new cargo at that time?     A. Yes, sir.

Q. When did you arrive in Point Orient?

A. We arrived on the 16th of September, at 11:15 A. M.

Q. Where did you go when you arrived at Point Orient?

A. You mean where did I go, personally? [159]

Q. No, where did the ship go.

(Deposition of Charles Anderson.)

A. She stayed right there.

Q. Whereabouts in the port did you go to?

A. We went to Denedin, New Zealand.

Q. Whereabouts at Point Orient did you go?

A. We went right alongside the wharf.

Q. What wharf did you go alongside?

A. The inside wharf, alongside the shed.

Q. What wharf is that?

A. I don't know the number of it; it is the inside wharf, anyway.

Q. What is the name of the wharf?

A. Point Orient wharf.

Q. What is Point Orient?

A. It is a landing, where they load case oil.

Q. For whom?

A. For the Standard Oil Company.

Q. When you arrived there, did you receive any directions where to go with your ship?

A. They told me where to tie the ship up.

Q. Who told you that?

A. A gentleman by the name of Connolly.

Q. What was his business there?

A. He was what they call the labor boss.

Q. For the Standard Oil Company?   A. Yes, sir.

Q. Where did he direct you to go?

A. He was right there on the wharf and took the lines, and he told me to make the ship fast right there. He took some of the lines himself.

Q. You made it fast, did you?

A. Yes, I made the ship fast right to that wharf.

(Deposition of Charles Anderson.)

Q. Do you know why you made it fast at that point?     A. Yes, sir.

Q. Why?     A. We came there to load case oil.

Q. Was there any case oil near your vessel?

A. There was case oil in the shed on the wharf.

Q. How near to your vessel was that?

A. About 25 or 30 feet.

Q. That was alongside?     A. Yes. [160]

Q. Do you know what the case oil was intended for?

A. I was told that some of it was intended for the "Commerce."

Q. Who told you that?     A. Mr. Connolly.

Q. You mean at the time you went there?

A. Yes, sir.

Q. What did you say to Mr. Connolly about your ship?

A. I told him that she was ready for loading.

Q. What did he do then?

A. I don't know that he did anything; he didn't do anything.

Q. Did he examine your ship?

A. Oh, yes, he went down in the hold and examined the ship, examined the dunnage.

Q. He examined the dunnage, did he?

A. Yes, sir.

Q. And what did he say about the dunnage?

A. He said it was perfectly satisfactory.

Q. Was that before or after he pointed out the cargo to you?



(Deposition of Charles Anderson.)

Mr. SUTRO.—That is objected to on the ground that it assumes a fact that has been proven.

A. Well, that is more than I can say, whether it was before or after.

Mr. DENMAN.—Q. Was it at the same time?

A. About at the same time.

Q. What does the labor boss do on that dock?

A. He is running the gang that is wheeling out the cases to the ship's side.

Q. Does he bring out cargo to the ship's tackle?

A. Yes, sir.

Q. Have you ever seen him do it in any other case?     A. Oh, yes.

Q. Many times there?

A. I saw it two particular times being done.

Q. For other vessels?     A. Yes, sir.

Q. Loading there?     A. Loading right there.

Q. Who else did you talk with at Point Orient, if anybody, regarding your vessel?     A. Mr. Jones.

Q. Who is Mr. Jones?

A. He is the head man for the two [161] wharves.

Q. Who does he represent there?

A. The Standard Oil.

Q. What was the conversation between you and Mr. Jones?

A. About the same it was with Mr. Connolly, that the ship was ready for loading.

Q. Did he go aboard your ship?     A. Yes, sir.

Q. Did he examine her?

A. He went down in the hold and examined the dunnage, and everything.

(Deposition of Charles Anderson.)

Q. How soon was that after you arrived?

A. Well, it probably was four or five days, or so; I could not state the date exactly.

Q. Within a week, anyway, of the time of your arrival.     A. Yes, sir.

Q. What did he say about the dunnage?

A. He said it was perfectly satisfactory; the fact of the matter is he said it was the best dunnage he ever saw laid in this country

Q. Where had you sailed from before you came there?     A. We came from Levuka, Fiji, Islands.

Q. Have you the date you left there?

A. I don't remember the date of that.

Q. Can you remember the week you left Levuka?

A. No, I cannot remember that; it was in the month of June, I believe.

Q. In the month of June?     A. Yes, sir.

Q. The latter part, or the former part?

A. About the middle, I think.

Q. About the middle of June?

A. Yes. We arrived here in August. We were 72 days coming home; I remember that.

Q. 72 days coming home from Levuka?     A. Yes.

Q. On what date in August did you arrive?

A. That is something I cannot remember, either.

Q. Do you remember how many days you were discharging your cargo [162] here?

A. Five days.

Q. And how soon after that did you arrive at Point Orient?

(Deposition of Charles Anderson.)

A. I don't know exactly; it might have been two weeks, perhaps, as near as I can remember now.

Q. Before you arrived at Point Orient, did you know that the cargo was ready for you?

A. No, sir.

Q. When did you first learn that the cargo was ready for you?

A. After my arrival at Point Orient.

Q. Captain, you have stated that these gentlemen represented the Standard Oil Company there; do you know, as a matter of fact, whether or not they also represented the charterer, the Vacuum Oil Company?     A. I don't know.

Q. Did anybody else, other than these two gentlemen, talk with you about the cargo to be shipped on that voyage?     A. No.

Cross-examination.

Mr. SUTRO.—Q. Captain, did you speak to Mr. Connolly first, or to Mr. Jones first?

A. Mr. Connolly first.

Q. Was anybody else present at that conversation?

A. Oh, quite a number of men were around there, working around the wharf. I don't know if anyone heard what we said or not; I could not say.

Q. Well, you know whether anyone else was present at the conversation?

A. There were some men around there, but I could not say who they were. There are always some men around there.

(Deposition of Charles Anderson.)

Q. That is not what I asked you, Captain: I asked you, was anybody else present at the conversation.     A. No.

Q. How long since you have seen Mr. Connolly?

A. I have not seen him since we left there.

Q. Do you know where he is now?

A. I do not know where he is now.

Q. Have you inquired where he is?

A. No, sir. [163]

Q. What date did you say the "Commerce" arrived at Point Orient?

A. On the 16th of September.

Q. How soon after she arrived did you see Mr. Connolly?

A. I saw him right away, because he was taking the lines, making the ship fast.

Q. Did you go ashore, did you go on the pier, or dock, and tell him that she was ready to load, or did you communicate this to him from the ship?

A. He came on board.

Q. He came on board?     A. Yes, sir.

Q. I thought you said there were a lot of men working around where the conversation was held?

A. Around the wharf, yes.

Q. Was the conversation on the wharf, or on the ship?

A. On the ship and on the wharf, both; I went ashore afterwards with him.

Q. Where was the conversation where you told him she was ready to load?

(Deposition of Charles Anderson.)

A. Well, he stood on the wharf then, and I spoke to him from the railing, and then he came right aboard.

Q. You spoke to him from the railing?

A. Yes, from the ship's deck.

Q. You yelled out to him, did you?

A. I didn't have to yell out to him, because the ship was right close to the wharf, and it was just as easy to speak to him there as it is to you now.

Q. Then when I asked you before where the conversation was, you said he came aboard?

A. He came aboard after I told him.

Q. What were the precise words you said to him, if you remember?

A. I told him that the ship was ready for loading.

Q. That is not what you said, is it? What were the words you said?

A. I could not tell you exactly the expression I used, that is pretty hard for me to remember now. [164]

Q. But tell me just as nearly as you can remember.

A. I said the ship was ready for loading.

Q. But you didn't tell him that way; I mean what were the words you used?

A. I don't know that I could say anything else.

Q. You spoke to him, you addressed him, and you made some remark to him; now, do you remember what the remark was that you made to him?

A. The only thing, I probably asked him if he wanted to come on board and take a look at the dun-

(Deposition of Charles Anderson.)

nage. That is probably about the only remark I would make.

Q. With reference to loading, what was the remark you made?

A. I might have asked him if the cargo was ready.

Q. You asked him that? A. Yes, sir.

Q. What did he say? A. That is what I said.

Q. And what did he say?

A. He said the cargo was ready, the biggest part of it.

Q. You said? A. He said.

Q. But you don't remember what you said, what you asked him, what were the words you used?

A. I can't remember that.

Q. You can't remember that? A. No.

Q. You say he then went aboard the ship?

A. Yes, sir.

Q. And you showed him around the ship?

A. Yes, sir.

Q. You showed him the dunnage?

A. I showed him the dunnage.

Q. Was he alone?

A. He was alone, yes, sir.

Q. Did he go down into the hold?

A. Yes, sir.

Q. How soon after that was it that you saw Mr. Jones?

A. Well, I could not say how many days it was after that; it was inside of five days, anyway, five or six days.

Q. It was not the same day?

(Deposition of Charles Anderson.)

A. Not that I can remember; no, I don't think it was the same day.

Q. Where did you see M. Jones?

A. I saw him on the wharf first. [165]

Q. What was Mr. Jones doing?

A. Do you mean at that time?

Q. When you saw him.

A. He was just coming along the wharf when I spoke to him.

Q. Was he alone?

A. As near as I can remember.

Q. What time of the day was it?

A. I don't know.

Q. You don't know whether it was the morning or the evening? A. I could not say.

Q. How did you happen to be on the wharf?

A. Going and coming regularly, and looking around. I don't suppose I had any particular reason to be on the wharf that day.

Q. You say it might have been five days after the ship got there?

A. It might have been five days, yes.

Q. And you don't know what you were doing on the wharf?

A. I was not hunting for anything, that's sure.

Q. And you don't know what time of day it was?

A. No, that I don't remember.

Q. Did you speak to Mr. Jones, first, or did he speak to you?

A. I don't remember that, either.

(Deposition of Charles Anderson.)

Q. What did you say to him?

A. I told him that the ship was ready for loading.

Q. Is that all you said?

A. I might have said a good many other things, but I can't remember all that I said.

Q. You just went up to him and said the ship was ready for loading?

A. We might have had some conversation first about different things for all I remember; however, I notified him that the ship was ready for loading.

Q. I understand that, you have told me that. Do you remember any other part of the conversation?

A. No.

Q. You don't remember anything else you said to him?

A. Only if he would like to go and take a look at the hold, and he did so. [166]

Q. You asked him if he would like to go on board and take a look at the dunnage? A. Yes, sir.

Q. Was that said to him after you told him the ship was ready for loading?

A. That is something I could not answer; I don't remember that; the chances are we had a whole lot of talk.

Q. You said that, Captain, but you don't remember any of the talk. A. No.

Q. Nothing at all?

A. No, I can't remember what we talked about.

Q. Do you remember what words you used when



(Deposition of Charles Anderson.)

you spoke to him about the ship being ready, do you remember what you said?

A. I could not remember the expression; no.

Q. Was there anybody present at the conversation?     A. No.

Q. Were there men around there working?

A. There are men around that wharf all the time.

Q. I didn't ask you that, Captain.

A. There were men around there then, but they didn't hear everything we said.

Q. There were men around there then?

A. Yes, sir.

Q. Do you remember where they were?

A. They were on the wharf.

Q. What were they doing?

A. I don't remember what they were doing.

Q. When you say there were men around there, have you the picture in your mind now that there were men around there?

A. There were men around the wharf.

Q. What were they doing?

A. I don't know. It was not my business to know that.

Q. Were they standing still?

A. They were working at something, I suppose.

Q. But you don't remember what?     A. No.

Q. When he went aboard, did he look at the dunnage?     A. Mr. Jones?

Q. Yes.     A. Yes, sir.

Q. Was it he, or was it Mr. Connolly who told

(Deposition of Charles Anderson.)

you it was the finest dunnage he had ever seen?

A. Both of them said that. [167]

Q. Both of them said that? A. Yes, sir.

Q. Do you remember what they said?

A. They made the expression—of course, I could not use the exact words, but it was the best dunnage they had seen laid in this country.

Q. And Mr. Jones told you that, too?

A. Yes, he said so, too.

Q. You don't remember whether that was in the evening, or in the morning?

A. That I don't remember.

Q. Before you took the "Commerce" up to Point Orient, you telephoned to Mr. Jones, did you?

A. No, sir.

Q. You didn't telephone before you took her up there? A. No, sir.

Q. You know Mr. Jones quite well, don't you?

A. I had never met Mr. Jones before.

Q. You had never seen him before? A. No, sir.

Q. Do you know Mr. Connolly well?

A. No, I had not seen him before.

Q. Had you ever met Mr. Connolly before?

A. No.

Q. How did you know it was Mr. Connolly?

A. I found out his name afterwards.

Q. Who told you his name?

A. That I cannot remember; I was talking to him almost every day.

Q. What is that?

(Deposition of Charles Anderson.)

A. I was talking to him almost every day; that is how I found his name.

Q. Had you ever seen him before?     A. No.

Q. You had never seen Mr. Connolly before that day?

A. I had never seen Mr. Connolly before that.

Q. Had you ever seen Mr. Jones before that?

A. No.

Q. The "Commerce" was the only schooner that was tied up there at that time, was she not?

A. Yes, at that time.

Mr. DENMAN.—At what time? [168]

Mr. SUTRO.—Now, just pardon me a moment.

Mr. DENMAN.—But you say, "at that time"; I think you should specify the time more particularly.

Mr. SUTRO.—You can straighten it out on re-direct.

Mr. DENMAN.—But the time is not fixed in your question.

Mr. SUTRO.—Do you object to the question?

Mr. DENMAN.—Yes, I object to the question on the ground that the time is not fixed definitely, and I think the time should be fixed.

Mr. SUTRO.—Q. Who, if anybody, introduced Mr. Jones to you?

A. I don't know that anybody introduced me, as near as I can remember.

Q. What is that?

A. I say that as near as I can remember I don't think I got any introduction to him.

(Deposition of Charles Anderson.)

Q. That evening that you saw him, was that the first time you saw him, that day, or that time you saw him?

A. The first time I had ever seen Mr. Jones was then; I had never been to that wharf before.

Q. On the day that you spoke to him and told him that the cargo was ready, that is the first time you ever seen him?

A. Well, I would not say that. What I mean to say is, I never had seen Mr. Jones until the day I arrived there; and probably two or three days after I came there it was that I spoke to him.

Q. And told him that the cargo was ready?

A. Yes, sir.

Q. The first time you saw him, is when you told him the cargo was ready?

A. I might have seen him before; that I cannot remember.

Q. You never had spoken to him before?

A. No, sir.

Q. Was anybody present when you spoke to Mr. Jones?     A. No.

Q. You know Mr. Kirchman, don't you?

A. Yes. [169]

Q. The gentleman sitting here?     A. Yes.

Q. What are his initials?     A. H., I believe.

Q. H. Kirschman?     A. Yes.

Q. Is it H. Kirschman, Jr., or H. Kirschman?  
Which is it? I don't know which it is.

Mr. DENMAN.—Junior.

(Deposition of Charles Anderson.)

Mr. SUTRO.—Q. Have you discussed with Mr. Kirchman the testimony you are giving here to-day in this case?

A. No, sir.

Q. You never talked to him about it at all?

A. No, sir.

Q. Were you at Mr. Kirchman's office to-day?

A. Yes, sir.

Q. And did you discuss it with anybody there?

A. No, sir.

Q. Have you ever talked with anybody about your testimony?     A. Not with anybody.

Q. You have not talked with Mr. Demman?

A. No.

Q. Or talked with Mr. Resleuer?     A. No.

Q. You have not talked with anybody at all about the testimony that you are now giving?     A. No.

Q. Who told you to come here to-day?

A. Mr. Kirschman.

Q. Did you ask him why you were to come?

A. I knew that before; he wired for me to come down.

Q. He wired you where?

A. To Aberdeen, for me to come here.

Q. What did he wire you?

A. To come down to San Francisco, stating about this case, with regard to the charter of the schooner "Commerce." That is all Mr. Kirschman said to me.

Q. That is the first time you knew that you were

(Deposition of Charles Anderson.)

to give your testimony in this case? A. Yes.

Q. Don't you know that it had been arranged that you were to give your testimony in this case about two or three weeks ago, or four weeks ago?

A. I don't know.

Q. You didn't know that? A. No, sir. [170]

Q. When did you sail for Aberdeen?

A. From here?

Q. Yes. A. I don't remember the date.

Q. It is about two or three weeks ago, isn't it?

A. No, it is five weeks ago, or more.

Q. What is that?

A. It is more than five weeks, perhaps. I was 24 days going up there.

Q. Had you not been told, just, before you left, that your deposition was to be taken in this case?

A. Oh, yes, I believe Mr. Kirschman said something about it, that he may send for me.

Q. That he may send for you?

A. Yes; that is what he told me, if I remember right now.

Q. Then he did talk to you about this thing?

A. Yes, sir.

Q. And you did talk to Mr. Kirchman about your testimony?

A. Not about my testimony. He just told me he might have to send for me to come down.

Q. Then, if I understand you right, nobody ever asked you whether you told anybody that the "Commerce" was ready to load at Point Orient?

(Deposition of Charles Anderson.)

A. Excuse me, I didn't get that.

Q. Nobody connected with this case, or with Sanders & Kirschman, or any of the attorneys, ever asked you whether you told anybody at Point Orient that the "Commerce" was ready to load?

A. Nobody ever asked me.

Q. And you never told anybody until you told us here to-day— A. (Intg.) No.

Q. (Continuing.) Wait a minute, Captain; that you had told Mr. Connolly that the "Commerce" was ready to load, and that you told Mr. Jones that the "Commerce" was ready to load: Is that correct?

A. Yes.

Q. That is correct? A. Yes.

Q. The number of the dock or wharf at which the "Commerce" was [171] made fast, you don't recall if there was any number on the wharf, at all. It is the inside wharf, that is all I do know about it.

Q. Did she remain in there until she sailed?

A. We were ordered to go over to the other wharf because we were in the way of some other vessel that wanted to get in there to load.

Q. Did she remain there?

A. She remained at that wharf; it is all one wharf. She didn't remain at that particular arm of the wharf.

Q. Where was she taken?

A. Just across to the outside. She was lying here like this, and we just pressed her over to that wharf.

(Deposition of Charles Anderson.)

Q. Do you know the initials of Mr. Jones?

A. No, sir, I don't.

Q. Do you know the initials of Mr. Connolly?

A. I do not.

Q. Have you seen Mr. Jones recently?      A. No.

Q. Do you know where he is?

A. I have no idea where they are, either one of them.

Q. You have no idea where Mr. Jones is?

A. No, sir.

Q. You said that you were told that some of the case oil was in the shed or warehouse—what did you say about that, do you remember?

A. Yes, I was told there was some cargo in the shed.

Q. Who told you that?      A. Mr. Connolly.

Q. Did you ask him?

A. I don't remember whether I asked him, or not; he might have told me without my asking him; that I could not say.

Q. You never saw him before, you say?

A. I never saw him before.

Q. Do you know whether or not it was Mr. Jones who told you that?      A. Connolly told me first.

[172]

Q. Did Jones tell you also?

A. I believe he told me afterwards.

Q. Jones told you also?      A. Yes, sir.

Q. Was that the same day that you told him that the ship was ready to load?



(Deposition of Charles Anderson.)

A. That I cannot remember; I don't remember that.

Mr. SUTRO.—I think that is all.

Redirect Examination.

Mr. DENMAN.—Q. Do you know who Mr. Resleuer is? A. No, sir.

Q. Do you know this gentleman here, this lame gentleman right here? A. No.

Q. You have seen him before?

A. It seems to me I have seen him, yes.

Q. Do you remember coming to this office shortly after the "Commerce" was unable to get her cargo, and telling me about your experiences up there, along last fall some time? A. Yes.

Q. And this lame gentleman was here at the time?

A. It seems to me I remember that. Yes, I remember that, now.

Q. And telling us about your seeing Jones and Connolly at that time?

A. Yes, certainly I remember that; yes, I think of that now.

Q. That was some months ago?

A. I don't remember what time that was. I think that was before I went away on the last trip, come to think of it now. It was so long ago that I had forgotten all about it.

Q. How many times, altogether, did you see Mr. Jones there?

A. I saw him almost every day I was there.

Q. You saw him almost every day?

(Deposition of Charles Anderson.)

A. Nearly every day.

Q. What was he doing when you saw him?

A. He was in the office and along the wharf, attending to his work.

Q. And what was his work as you saw it? What did you see him do there?

A. I seen him doing some writing, and speaking on [173] the phone, etc., and getting orders and giving orders to the men around there more or less. I really don't understand his business, but I know he was busy with something. I didn't really pay much attention to him.

Q. Did you ever have any conversation with him regarding stevedores?

A. Yes, the first day, the first time, I believe, when I spoke to Mr. Jones, we spoke about stevedores.

Q. What did he say?

A. Well, he didn't seem to have anything to say. The stevedores were on strike, I believe, at that time.

Q. Did you have any talk with Mr. Connolly about stevedores?

A. We talked about it most every day, off and on, talking about labor and so on.

Q. You spoke of a strike; did you have any discussion with Mr. Connolly about the strike?

A. Yes, sir. [174]

**Certificate of Commissioner to Deposition of Charles  
Anderson.**

United States of America,  
State and Northern District of California,  
City and County of San Francisco.—ss.

I certify that, in pursuance of stipulation of counsel, on Tuesday, September 7, 1920, before me, Francis Krull, a United States Commissioner for the Northern District of California at San Francisco, at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared Charles Anderson, a witness called on behalf of the libelants in the cause entitled in the caption hereof; and William Denman, Esq., appeared as proctor for the libelants, and Alfred Sutro, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of

delivering the same with my own hands to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor [175] attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

And I further certify that on the following day, to wit, on Wednesday, September 8th, the said Charles Anderson appeared in my office and stated that he desired to correct his testimony; whereupon the following occurred:

The COMMISSIONER.—Q. What is it you want to say, Captain, with reference to correcting your deposition that was taken yesterday?

A. In regard to the question by the lawyer, when he asked me if I had been talking to anyone, or if anyone had been talking to me regarding the case. I understood him to ask me whether anyone had instructed me to say during the deposition, or the trial, or whatever you call it; that is what I understood him to ask me, and I answered "No"; I got confused.

Q. What is the fact?

A. The fact of the matter is that I was up to Mr. Denman's office and Mr. Denman asked me about it.

Q. When? A. Previously.

Q. How long before?

A. The same day, or the day before; the same day, I think it was.

Q. And what did you say to Mr. Denman in reference to your testimony?

A. I just told him about the case, how the things stood.

Q. What facts did you tell him?

A. About the time that we came up to the Point Orient wharf, and that she was reading for loading, etc.—the different things.

Q. State exactly what you told him.

A. I told him the day we came to the wharf, and about the time of day, and about Mr. Connolly coming on board and looking at the dunnage, and [176] that Mr. Connolly found it correct; and also speaking to Mr. Jones.

Q. Is that as you testified here yesterday—I mean the facts that you testified to in your deposition yesterday you told to Mr. Denman before you gave your testimony under oath in this deposition?

A. Yes, sir.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 10th day of Sept., 1920.

[Seal] FRANCIS KRULL,  
United States Commissioner, Northern District of  
California, at San Francisco.

[Endorsed]: Filed Nov. 19, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [177]

In the District Court of the United States in and  
for the Southern Division of the Northern Dis-  
trict of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO R. & S. CO. et al.,

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,

Respondent.

**(Deposition of Alexander Beattie, Taken on Behalf  
of Libelants.)**

BE IT REMEMBERED, that on Wednesday, October 22, 1919, pursuant to stipulation of counsel hereunto annexed, at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Alexander Beattie, a witness called on behalf of the libelant.

William Denman, Esq., appeared as proctor for the libelant, and Alfred Sutro, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above named witness may be taken *de bene esse* on behalf of the libelant at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, on Wednesday, October 22, 1919, before Francis Krull, [178] a United States Commissioner for the Northern District of California and in shorthand by Charles R. Gagan.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.

(It is stipulated that the Vacuum Oil Company, Proprietary, Ltd., designated as the respondent herein, does not by appearing at the taking of this deposition through Messrs. Pillsbury, Madison & Sutro, represented by Adolph Sutro, attorneys, enter an appearance in this libel, and that any question regarding the jurisdiction of the above-entitled court over said respondent is reserved to said respondent,

(Deposition of Alexander Beattie.)

and that the interrogation by way of cross-examination by Mr. Alfred Sutro of the witness who has been sworn shall not in any manner or wise prejudice any question regarding the jurisdiction of the above-entitled court over said respondent.

(It is further stipulated that in the event that jurisdiction is properly procured over the respondent in the case, the deposition shall not be objected to upon the ground of any present absence of jurisdiction; that no claim of jurisdiction shall be made by the libelants based upon the appearance of Mr. Sutro or his firm at this time, or unless jurisdiction over the respondent has already been properly obtained.) [179]

ALEXANDER BEATTIE, called for libelant, sworn.

Mr. DENMAN.—Q. Captain Beattie, what is your occupation? A. Master mariner.

Q. How long have you been a master mariner?

A. I have been master for about twenty years, in the neighborhood of twenty years.

Q. Where are you sailing now?

A. I am master of the schooner "Luzon," on the way to New Zealand.

Q. When do you expect to have her loaded?

A. Well, Friday, I guess.

Q. And you will sail shortly after that?

A. Saturday, or maybe I won't get away until Sunday.

Q. Do you know Mr. Henry Kirschman, who is seated here on my right?



(Deposition of Alexander Beattie.)

A. Yes; he is my managing owner.

Q. And Mr. Blumer, who is seated on my left?

A. I have met the gentleman.

Q. Were you in the office of the Vacuum Company in the Mills Building, on the morning of September 16, 1919?     A. Yes, sir.

Q. At about what hour?

A. In the neighborhood of eleven o'clock.

Q. Who were present at that time?

A. Mr. Blumer, Mr. Kirschman and I.

Q. What took you to that office?

A. We were there on business connected with the "Luzon."

Q. Did you hear any conversation between Mr. Kirschman and Mr. Blumer concerning the schooner "Commerce"?     A. Yes, sir.

Q. Can you tell us what that conversation was?

A. Mr. Blumer asked Mr. Kirschman how he "Commerce" was getting on for loading, and he told him that the tugboat had been ordered that morning at daylight, and that she was either up or on her way up the river to load.

Q. What happened then?

A. Mr. Kirschman asked him if there was any further notice with regard to the loading of the vessel, and he said, no, that that is all that was necessary. [180]

Q. Did anything else transpire with reference to the schooner "Commerce" in that conversation?

A. I think that is about all; we were there on

other business, of course, and that came in between.

Mr. DENMAN.—That is all.

Mr. SUTRO.—No cross-examination. [181]

**Certificate of Commissioner to Deposition of  
Alexander Beattie.**

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Wednesday, October 22, 1919, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared Alexander Beattie, a witness called on behalf of the libelants in the cause entitled in the caption hereof; and William Denman, Esq., appeared as proctor for the libelants, and Alfred Sutro, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the

deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named [182] in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid, this 10th day of Sept., 1919.

[Seal]

FRANCIS KRULL,

United States Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Nov. 19, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [183]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY.

SAN MATEO REALTY & SECURITY COMPANY,

Libelant,

vs.

VACUUM OIL COMPANY, P'T'Y, LTD.,

Respondent.

**(Deposition of Henry Kirschman, Jr., Taken on Behalf of Libelant.)**

BE IT REMEMBERED, that on Thursday, January 6, 1921, pursuant to stipulation of counsel hereunto annexed, at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Henry Kirschman, Jr., a witness called on behalf of the libelant.

J. F. Resleure, Esq., appeared as proctor for the libelant, and Alfred Sutro, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing

(Deposition of Henry Kirschman, Jr.)

but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the libelant at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San [184] Francisco, State of California, on Thursday, January 6, 1921, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Charles R. Gagan.

(It is further stipulated that the depositions, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.) [185]

HENRY KIRSCHMAN, Jr., called for libelant, sworn.

Mr. RESLEURE.—Q. Mr. Kirschman, you reside in the City and County of San Francisco?

A. I do.

(Deposition of Henry Kirschman, Jr.)

Q. And you are leaving for the Philippines on the 9th of this month?   A. I am.

Q. What is your occupation?   A. Lumberman.

Q. Have you any other occupation?

A. Also a director in Sanderson & Kirschman, Inc.

Q. Were you a director in Sanderson & Kirschman in the fall of 1919?   A. I was.

Q. Do you know Captain Alexander Beattie?

A. I do.

Q. Who is he?

A. He is the master of the schooner "Luzon."

Q. Do you know Mr. Bloomer?   A. Yes, sir.

Q. Were you in the office of the Vacuum Oil Company, Pty, Ltd., in the Mills Building, on September 16, 1919?

A. I was in Mr. Bloomer's office, and I understand that that is also the office of the Vacuum Oil Company.

Q. At what time were you there on that day?

A. In the forenoon of September 16, 1919.

Q. Do you know about what time?

A. It was between the hours of, say, 9 and 12.

Q. Who were present at that time?

A. Mr. Bloomer, Captain Beattie and myself.

Q. What was the nature of your business there?

A. We were over to see Mr. Bloomer in connection with the business of the schooner "Luzon."

Q. While you were there, did you have any conversation with Mr. Bloomer in regard to the schooner "Commerce"?

(Deposition of Henry Kirschman, Jr.)

A. Yes. I introduced Captain Beattie as the master of the schooner "Luzon," [186] and then Mr. Bloomer asked me about the "Commerce," how the "Commerce" was getting along loading, and I told him that the towboat had been ordered to take her up to the river that morning, up to the oil wharf that morning, and that she was either up there or en route up there.

Q. Was anything further said?

A. Then Mr.—now, wait a minute; just ask me that question again; I didn't quite get that.

Q. Did you say anything further, beyond that the schooner was up, or going up?

A. That she was up, or going up to load, and I asked Mr. Bloomer if he required any further notice with reference to her loading, and he answered "No," that that was all that would be necessary.

Q. Was that all that transpired in regard to the "Commerce"?

A. That is all that transpired with reference to the "Commerce," as our business was in reference to the "Luzon."

Q. Prior to that time, did you ever have any conversation with Mr. Bloomer with regard to the readiness of the "Commerce" to load?

A. No, there was no occasion to talk of her readiness to load, as we were repairing the boat and getting her ready prior to that time.

Q. Did you ever speak to Mr. Bloomer in regard to the "Commerce" before that time?

A. Yes, I spoke to Mr. Bloomer, and also to Mr.

(Deposition of Henry Kirschman, Jr.)

Slingerland, of the Standard Oil Company.

Q. Was that conversation to them personally, or was it by phone?

A. It would either be by phone, or when meeting them on the floor of the Merchants Exchange.

Q. Do you remember the nature of any of the conversations you had?

A. Authentically, no, except that I would be asked from time to time when the boat would be ready to load, as they [187] would naturally want to know, to have their cargo ready.

Mr. RESLEURE.—I think that is all, Mr. Sutro.

Cross-examination.

Mr. SUTRO.—Q. You were present, Mr. Kirschman, when the deposition of Captain Beattie was taken in this cause on October 22, 1919, were you not?

A. At this office, yes, if that is the deposition.

Q. His deposition was taken only once, and you were present on that occasion?

A. I was present at that time; yes.

Q. Have you ever seen a transcription of the testimony of Captain Beattie?     A. I have.

Q. When did you last see it?     A. To-day.

Q. When, to-day?

A. About 10 or 15 minutes ago.

Q. Did you read it over?     A. I read it over.

Q. Did you read it over carefully?

A. I read it over.

Q. Who showed it to you?     A. Mr. Resleure.

Q. Did you ask to see it?



(Deposition of Henry Kirschman, Jr.)

A. Yes, I asked to see it.

Q. How did you know it was here?

A. I naturally expected that it would be here with the attorney.

Q. Didn't Mr. Resleure show it to you and tell you he had it?      A. No, I asked for it.

Q. How long are you going to be gone to the Philippines?

A. I think from three to four months.

Mr. SUTRO.—That is all. [188]

**Certificate of Commissioner to Deposition of Henry  
Kirschman, Jr.**

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Thursday, January 6, 1921, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of William Denman, Esq., in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared Henry Kirschman, Jr., a witness called on behalf of the libelant in the cause entitled in the caption hereof; and J. F. Resleure, Esq., appeared as proctor for the libelant, and Alfred Sutro, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said

cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the [189] said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 18th day of Jany., 1921.

[Seal] FRANCIS KRULL,  
United States Commissioner, Northern District of  
California, at San Francisco. [190]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COMPANY, a Corporation, et al., etc.,

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,

Respondent.

**Stipulation for Taking Deposition De Bene Esse.**

IT IS HEREBY STIPULATED AND AGREED by and between the proctors for the parties above named that the deposition of Henry Kirchmann, Jr., may be taken *de bene esse* on behalf of the Libelants above named at the office of William Denman, Esq., at Room 818, Merchants Exchange Building, in the City and County of San Francisco, State of California, on Thursday, January 6th, 1921, at the hour of two o'clock P. M. on the said day, before Francis Krull, Esq., a commissioner duly appointed by the above-entitled court.

Dated, January 4th, 1920.

WILLIAM DENMAN,

Proctors for Libelants.

PILLSBURY, MADISON & SUTRO,

Proctors for Respondent.

[Endorsed]: Filed Mar. 1, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [191]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COMPANY, a Corporation, D. VON der MEHDEN, HENRY FRISCHE, CHAS. NONNENMANN, HENRY WELLMAN, LILLY BRUCKMANN, C. ZEUTHEN, CARL VON der MEHDEN, ROBT F. ELDER, C. F. LURMANN, BETTY VON CLEVE, TILLMAN & BENDEL, a Corporation, CLARA OLIVER, F. B. KLOPPER, LOUISE SCHNABEL, SANDERS & KIRCHMANN, INC., a Corporation, and SCHOONER OWNERS COMPANY, a Corporation, Owners of the American Schooner, "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Decision.**

Filed June —, 1921.

(OPINION—ORDERING DECREE FOR  
LIBELANTS.)

WILLIAM DENMAN and McCLANAHAN &  
DERBY, Proctors for Libelants.

PILLSBURY, MADISON & SUTRO, Proctors  
for Respondent.

NETERER, District Judge.

This is a libel *in personam* to recover damages for alleged wrongful cancellation of a charter-party by the respondent upon the schooner "Commerce." The charter-party was made November 19, 1918. Among the provisions bearing upon this issue is "the vessel shall haul to such loading berth \* \* \* as may be designated by the charterer or his agents \* \* \* ," and "it is agreed that the lay-days for loading shall be \* \* \* —commencing when the vessel is ready to receive cargo \* \* \* and if the vessel is not ready to load by 2 o'clock P. M., on the 130 day after sailing for San Francisco, the charterer shall have the opinion of cancelling or maintaining this charter. \* \* \* " There is also a demurrage clause providing for \$200.00 per day. The 130 days would carry the cancelling date to October 6th. At the time of making this charter-party a number of vessels between the same parties were under charter. [192] The charter-party was negotiated by A. E. Wolff, representing the owners, and by the Standard Oil Co. representing the charterers. On this date vessels were scarce and in demand, and the rates were high. Soon thereafter rates began to fall, and in October had fallen from \$1.37½ to 70 cents a case for oil and from \$27.00 per thousand to \$15.00 per thousand for lumber. On October 11th, the respondent sent a note to the owners advising that the charter was cancelled, claiming no notice of readiness having been given.

The issue is a question of fact. It is conceded that the schooner returned to San Francisco sometime prior to September 13th, and went on dry-dock; that considerable communication by phone and correspondence was had between the owners and the Standard Oil Co.; that on September 4th, the Standard Oil Co. wrote a letter to the owners, directing that hereafter they communicate directly with C. A. Blumer; that on or after September 13th, Kirchmann, Sr., inquired of Mr. Blumer where the "Commerce" was to load. Blumer stated that he would find out and after inquiry from Mr. Slingerland's department of the Standard Oil Co., "found the cargo was on the Point Orient Wharf, and I telephoned Mr. Kirchmann to that effect"; that on September 16th, the surveyor's report of the vessel's fitness was delivered to Mr. Blumer. The witness Blumer testified that the vessel was "fit for anything." Question: "For the intended voyage?" Answer: "Yes." At Point Orient, Jones was head wharfinger, and had charge of the wharf and of the delivery of cargoes to ships tackle. Connolly was the labor foreman and acted under orders from Jones. The cargo was ready and the ship was ready and lay alongside. Jones, the wharfinger, and Connolly, the labor foreman, knew the ship was there. There were no other representatives [193] of the charterer at Point Orient wharf. Slingerland when asked why cargo was not delivered said "the ship never called for it; she just lay there doing nothing." During the time the "Commerce" was lying at Point Orient wharf there was a stevedore strike,

and Slingerland in answer to the following question made the following answer: "Do you remember some time around September 18th or 20th, 1919, having a telephone conversation with Mr. Wolff with reference to the 'Commerce,' in which it was mutually understood over the telephone that it would be inadvisable to employ \* \* \* non-union men in loading the 'Commerce' because the 'Jewett' was loading with union men, and that you said to Mr. Wolff, 'For God's sake, Wolff, don't send non-union men up here until the 'Jewett' is through. Stevenson is working here with union men and there would be trouble if at the same time you had non-union men on the 'Commerce' at the same berth?" Answer: "I was handling the situation with all ships along those lines at that time; in other words, when a union gang got away we would take on a ship that wanted to work with a non-union gang. The reason should be very apparent to you that we did not want to cause a fracas or a mixup on our property between non-union and union-men. If Mr. Wolff says he took that up with me it probably may have happened because it was a daily occurrence with everybody." Witness further stated he would not contradict the statement of Mr. Wolff, who said: Question: "Mr. Wolff, are you familiar with the stevedoring situation in September, 1919, at the time that the 'Commerce' went to Point Orient Dock for loading?" Answer: "Yes, sir." Question: "Would it have been possible to secure stevedores to load the 'Commerce' at that time?" Answer: "Yes." Question: "Do you re-

member having a conversation over the telephone about that time [194] with Mr. Slingerland with reference to stevedoring the 'Commerce'?" Answer: "I do." Question: "State to the Court the substance of that conversation as you remember it." Answer: "In essence I told Mr. Slingerland that Sanders & Kirchmann, the owners, naturally wanted to work the ship with non-union men if they could. This was just shortly after the ship went up there. The 'Jewett' was working then with non-union men. Slingerland over the telephone said—he was quite excited—in essence, 'For God's sake, Wolff, don't send non-union men up there while the 'Jewett' is there. Stevenson is working her with union men, and we don't want to have friction on our property.'"

I am satisfied the Standard Oil Co. was notified that the vessel was at the wharf, fit and ready for cargo; that Blumer knew the vessel was at the wharf and fit and ready for loading. I also believe that from the conversation between Kirchmann and Blumer on September 16th in the presence of Captain Beattie of the "Luzon," that Kirchmann was lead to believe that express notice of readiness was not necessary. Kirchmann and Captain Beattie positively so swear. Blumer says nothing was said about the "Commerce," "So far as I am aware of." From a consideration of all the evidence, I think it very likely that such a conversation should be had. There was a serious stevedoring situation because of the strike. The Standard Oil Co. who was furnishing cargo, as well as the owners, were much con-



cerned about the strike situation. The relation between all parties was friendly and the parties to this proceeding seemed to understand each other and co-operate at the time. The charterer was no doubt desirous of cancelling the charter-party, and from what did take place between the parties I can readily understand that the owners were lulled into a feeling [195] of security that formal notice of readiness was considered given or waived. The letter of September 4th from Mr. Slingerland that further details should be taken up with Blumer must be considered with the further future conduct of Blumer and the representatives of the Standard Oil Co., with relation to the loading, and stevedoring strike, and all of the surrounding circumstances that bear upon the situation. From all these I am convinced that the Standard Oil Co. still maintained a relation to the charterer beyond that of merely furnishing cargo, and knew, and that Blumer knew, that the vessel was fit and ready for cargo and was at Point Orient wharf, and that demand was made at Point Orient wharf, the proper berth, and also of the Standard Oil Co. at its offices. The fact that a claim for demurrage was not made under the circumstances and facts in this case should not prevent recovery. Omission to demand the "pound of flesh" under all the circumstances should not defeat a claim established as I believe this to be.

Footnote, p. 128, Scrutton on Charter-parties and Bills of Lading, says:

"If the charterers are proved to be otherwise aware of the readiness to load, I do not think express notice would be required."

Decree for libelant.

JEREMIAH NETERER,  
Judge.

[Endorsed]: Filed June 11, 1921. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [196]

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In the Southern Division of the District Court of  
the United States, in and for the Northern  
District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COM-  
PANY, a Corporation, D. VON der MEH-  
DEN, HENRY FRISCHE, CHAS. NON-  
NENMANN, HENRY WELLMAN, LILLY  
BRUCKMANN, C. ZEUTHEN, CARL VON  
der MEHDEN, ROBT. F. ELDER, C. F.  
LURMANN, BETTY VON CLEVE, TILL-  
MANN & BENDEL, a Corporation, CLARA  
OLIVER, F. B. KLOPPER, LOUISE  
SCHNABEL, SANDERS & KIRCH-  
MANN, INC., a Corporation, and  
SCHOONER OWNERS COMPANY, a  
Corporation, Owners of the American  
Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

H. W. WESTPHAL (Substituted for SAN MATEO REALTY & SECURITY COMPANY (a Corporation), and THUSNELDA WILKENS (Substituted for TILLMAN & BENDEL, a Corporation),  
Substituted Libelants.

**Decree.**

This cause coming on duly to be heard, and evidence, both oral and by deposition, having been presented to the Court by the respective parties, and the cause having been submitted to the Court on briefs, and the Court being fully advised in the premises, and having rendered and filed its decision and opinion herein on the 11th day of June, 1921, the Court now finds the ultimate facts to be as follows: [197]

**I.**

That prior to the filing of the libel herein, the said San Mateo Realty & Security Company, a corporation, assigned its interest in the Schooner "Commerce" and in this suit to H. W. Westphal, and said H. W. Westphal has been substituted as a party libelant herein for said San Mateo Realty & Security Company, a corporation, and that said Tillman & Bendel, a corporation, assigned its interest in said schooner "Commerce" and in this suit to Thusnelda Wilkens, and said Thusnelda Wilkens has been substituted as a party libelant herein for said Tillman & Bendel.

**II.**

That the charter-party herein sued upon was made and executed as alleged in said libel.

III.

That all the terms and conditions of the said charter-party on the part of the libelants to be performed have, by them, been performed, including *inter alios*:

(a) The giving of notice of readiness to load said vessel prior to the cancelling date of said charter-party;

(b) The said vessel being at all times from and after the 16th day of September, 1919, and prior to said cancelling date, fit and ready in berth to load the intended cargo.

IV.

That respondent on the 16th day of September, 1919, waived the requirement of said charter-party as to notice of readiness to load.

V.

That libelants have suffered damage by the non-performance of the said charter-party by the respondent in the sum of Seventeen Thousand Four Hundred Ninety-two and 32/100 Dollars (\$17,492.32), as of October 11th, 1919, which sum is wholly unpaid. [198]

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that said H. W. Westphal may be substituted as a party libelant for said San Mateo Realty & Security Company, a corporation, and the amended libel amended accordingly; that said Thusnelda Wilkens may be substituted for said Tillman & Bendel, a corporation, and the amended libel amended accordingly; that the libelants, H. W. Westphal, D. Von der Mehden, Henry

Frische, Chas. Nonnenmann, Henry Wellman, Lily Bruckmann, C. Zeuthen, Carl Von der Mehden, Robt. F. Elder, C. F. Lurmann, Betty Von Cleve, Thusnelda Wilkens, Clara Oliver, F. B. Klopfer, Louise Schnabel, Sanders & Kirchmann, Inc., a Corporation, and Schooner wners Company, a Corporation, owners of the American schooner "Commerce," have and recover from the respondent, Vacuum Oil Co., Proprietary, Ltd., the aforesaid sum of Seventeen Thousand Four Hundred Ninety-two and 32/100 Dollars (\$17,492.32), the damages sustained by libelants on account of said nonperformance of the said charter-party by respondent, together with interest at the rate of seven per cent per annum on all of said damages from the 11th day of October, 1919 (the date of the cancellation of said charter-party by said respondent), with costs to be herein taxed against said respondent.

Dated, June 21st, 1921.

M. T. DOOLING,  
District Judge.

[Endorsed]: Due service and receipt of a copy of the within proposed decree is hereby admitted this — day of —, 19—.

PILLSBURY, MADISON & SUTRO,  
Attorneys for Respondent.

Filed Jun. 21, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in Vol. 11' Judg. and Decrees, at page 42.  
[199]

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COMPANY, a Corporation, D. VON der MEHDEN, HENRY FRISCHE, CHAS. NONNENMANN, HENRY WELLMAN, LILLY BRUCKMANN, C. ZEUTHEN, CARL VON der MEHDEN, ROBT. F. ELDER, C. F. LURMANN, BETTY VON CLEVE, TILLMAN & BENDEL, a Corporation, CLARA OLIVER, F. B. KLOPPER, LOUISE SCHNABEL, SANDERS & KIRCHMANN, INC., a Corporation, and SCHOONER OWNERS COMPANY, a Corporation, Owners of the American Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Notice of Appeal.**

To the Clerk of the Above-entitled Court, to the Libelants Above Named, to H. W. Westphal and Thusnelda Wilkens, Substituted as Parties Libelant Herein in the Place and Stead of San Mateo Realty & Security Company, a Corporation, and of Tillman & Bendel, a Corporation,

Respectively, and to William Denman, Esq., and Messrs. McClanahan & Derby, Proctors for said Libelants:

You and each of you will please TAKE NOTICE that the Vacuum Oil Company, Proprietary, Ltd., a corporation, the respondent above named, hereby appeals from the final decree made and entered in this cause on the 21st day of June, 1921, to the United States [200] Circuit Court of Appeals, for the Ninth Circuit, to be holden in and for said Circuit at the City and County of San Francisco, State of California.

Dated: September 16, 1921.

PILLSBURY, MADISON & SUTRO,  
Proctors for Respondent.

[Endorsed]: Receipt of a copy of the within notice of appeal is hereby acknowledged this 16th day of July, 1921.

WILLIAM DENMAN,  
Proctor for Libelants.

Filed Sep. 16, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [201]

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COMPANY, a Corporation, D. VON der MEHDEN, HENRY FRISCHE, CHAS. NONNENMANN, HENRY WELLMAN, LILLY BRUCKMANN, C. ZEUTHEN, CARL VON der MEHDEN, ROBT. F. ELDER, C. F. LURMANN, BETTY VON CLEVE, TILLMANN & BENDEL, a Corporation, CLARA OLIVER, F. B. KLOPPER, LOUISE SCHNABEL, SANDERS & KIRCHMANN, INC., a Corporation, and SCHOONER OWNERS COMPANY, a Corporation, Owners of the American Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Assignments of Error.**

Comes now the Vacuum Oil Company, Proprietary, Ltd., a corporation, respondent and appellant herein, and contends that in the record, opinion, decision and final decree in this cause there is manifest and material error, and said respondent and appellant now makes, files and presents the follow-



ing assignments of error on which it relies, to wit:

I.

That the District Court erred in rendering and entering the final decree herein, dated June 21, 1921.

II.

That the District Court erred in not dismissing the libel herein, with costs to the libelants, as prayed for in the [202] respondent's answer, and in not granting to the respondent a decree of dismissal herein, with its costs as prayed for.

III.

That the District Court erred in rendering and entering any decree in favor of the libelants herein, because the libelants never notified the respondent, expressly or otherwise, that the "Commerce" was ready to load, and because the respondent, on October 11, 1919, gave notice to the libelants of the cancellation of the charter-party of the said vessel, at which time the libelants had not notified the respondent that the "Commerce" was ready to load.

IV.

That the District Court erred in rendering and entering any decree in favor of the libelants herein, because the "Commerce" was not ready to load until long after the 6th day of October, 1919, that being the cancelling date in the charter-party of said vessel, and respondent having given to the libelants notice of cancellation of the charter-party of said vessel on October 11, 1919, and long before the "Commerce" was ready to load.

V.

That the District Court erred in holding and deciding that express notice of readiness of the "Commerce" to load was unnecessary.

VI.

That the District Court erred in holding and deciding that express notice of readiness to load ever was given on behalf of the schooner "Commerce" to the respondent, or to anyone by it authorized in that behalf, on or prior to October 6, 1919, that [203] being the cancelling date in the charter-party of said vessel.

VII.

That the District Court erred in holding and deciding that the Standard Oil Company was notified that the "Commerce" was at the Point Orient wharf, fit and ready for cargo, on or prior to October 6, 1919, that being the cancelling date in the charter-party of said vessel.

VIII.

That the District Court erred in holding and deciding that Blumer, the agent of the respondent, knew that the "Commerce" was at the Point Orient wharf, fit and ready for cargo, on or prior to October 6, 1919, that being the cancelling date in the charter-party of said vessel.

IX.

That the District Court erred in holding and deciding that, from the conversation between Kirchmann, Jr., and Blumer on September 16, 1919, in the presence of Captain Beattie, of the "Luzon," Kirchmann, Jr., was led to believe that express

notice to the respondent that the "Commerce" was ready to load was not necessary.

X.

That the District Court erred in holding and deciding that the Standard Oil Company, after the 4th day of September, 1919, still maintained any relation whatever to the respondent beyond that of merely furnishing cargo.

XI.

That the District Court erred in holding and deciding that demand for cargo was made on behalf of the libelants at the Point Orient wharf. [204]

XII.

That the District Court erred in holding and deciding that demand for cargo was made upon the Standard Oil Company at its offices or elsewhere.

XIII.

That the District Court erred in holding and deciding that the respondent was, by express notice or otherwise, proved to be aware of the readiness of the schooner "Commerce" to load.

XIV.

That the District Court erred in holding, deciding and decreeing that the charter-party herein sued upon was made and executed as alleged in the libel herein.

XV.

That the District Court erred in holding, deciding and decreeing that all, or any, of the terms and conditions of the charter-party of the schooner "Commerce," on the part of the libelants to be performed, have by them been performed.

XVI.

That the District Court erred in holding, deciding and decreeing that the libelants performed the terms and conditions of the charter-party of the "Commerce" relating to the giving of notice of readiness to load said vessel prior to the cancelling date of said charter-party.

XVII.

That the District Court erred in holding, deciding and decreeing that the "Commerce" was at all times or at any time, from and after the 16th day of September, 1919, and prior to the cancelling date fixed by the charter-party, fit and ready, [205] in berth to load the intended cargo.

XVIII.

That the District Court erred in holding, deciding and decreeing that the respondent, on the 16th day of September, 1919, or at any time, waived the requirement of the charter-party of the "Commerce" as to notice of readiness to load.

XIX.

That the District Court erred in holding, deciding and decreeing that the charter-party of the "Commerce" was not performed by the respondent.

XX.

That the District Court erred in holding, deciding and decreeing that the libelants have suffered damage in the sum of Seventeen Thousand Four Hundred Ninety-two and 32/100 Dollars (\$17,492.32), or in any other sum, as of October 11, 1919, or as of any other time, by reason of the nonperformance

by the respondent of the charter-party of the "Commerce," or of any term or condition thereof.

XXI.

That the District Court erred in holding, deciding and decreeing that the libelants recover interest on the sum of Seventeen Thousand Four Hundred Ninety-two and  $32/100$  Dollars (\$17,492.32) at the rate of seven (7) per cent per annum, or at any other rate, from the 11th day of October, 1919, or from any other time.

PILLSBURY, MADISON & SUTRO,  
Proctors for Respondent.

[Endorsed]: Filed Sep. 16, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [206]

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In the Southern Division of the District Court of  
the United States in and for the Northern Dis-  
trict of California, First Division.

IN ADMIRALTY—No. 16,701.

SAN MATEO REALTY & SECURITY COM-  
PANY, a Corporation, D. VON der MEH-  
DEN, HENRY FRISCHE, CHAS. NON-  
NENMANN, HENRY WELLMAN, LILLY  
BRUCKMANN, C. ZEUTHEN, CARL  
VON der MEHDEN, ROBT. F. ELDER,  
C. F. LURMANN, BETTY VON CLEVE,  
TILLMANN & BENDEL, a Corporation,  
CLARA OLIVER, F. B. KLOPPER,  
LOUISE SCHNABEL, SANDERS &

KIRCHMANN, INC., a Corporation, and  
SCHOONER OWNERS COMPANY, a  
Corporation, Owners of the American  
Schooner "COMMERCE,"

Libelants,

vs.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Respondent.

**Stipulation and Order Regarding Original Exhibits  
on Appeal.**

It is hereby STIPULATED and AGREED by and between the respective parties hereto that all exhibits introduced in evidence upon the trial of the above-entitled cause in the District Court may be sent up in connection with the appeal presented herein as original exhibits to the United States Circuit Court of Appeals for the Ninth Circuit, instead of being copied in the Apostles on Appeal.

Dated: September 16th, 1921.

WILLIAM DENMAN,

Proctor for the Libelants.

PILLSBURY, MADISON & SUTRO,

Proctors for the Respondent.

It is so ordered.

M. T. DOOLING,

District Judge. [207]

[Endorsed]: Filed Sep. 16, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [208]

**Certificate of Clerk U. S. District Court to Apostles  
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 208 pages, numbered from 1 to 208, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of San Mateo Realty & Security Company, a Corp., et al., vs. Vacuum Oil Company, Proprietary, Ltd., No. 16,701, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied herein), and the instructions of the proctors for respondent and appellant herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Eighty-three Dollars and Ninety-five Cents (\$83.95), and that the same has been paid to me by the proctors for respondent herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of October, A. D. 1921.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,  
Deputy Clerk. [209]

[Endorsed]: No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Vacuum Oil Company, Proprietary, Ltd., a Corporation, Appellant, vs. H. W. Westphal, D. Von der Mehden, Henry Frische, Chas. Nonnemann, Henry Wellman, Lilly Bruckmann, C. Zeuthen, Carl Von der Mehden, Robert F. Elder, C. F. Lurmann, Betty Von Cleve, Thusnelda Wilkens, Clara Oliver, F. B. Klopper, Louise Schnabel, Sanders & Kirchmann, Inc., a Corporation, and Schooner Owners Company, a Corporation, Owners of the American Schooner "Commerce," Appellees. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed October 13, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



United States Circuit Court of Appeals for the  
Ninth Circuit.

No. 3785.

VACUUM OIL CO., PROPRIETARY, LTD.,  
Appellant,

vs.

H. W. WESTPHAL et al.,

Appellees.

**Stipulation Regarding New Proofs on Appeal.**

It is hereby STIPULATED and AGREED by and between the respective parties hereto as follows:

That the "Jewett" arrived at the dock of the Standard Oil Company at Point Orient, California, on September 29, 1919, at the hour of 4:45 P. M.; that said vessel commenced loading on September 30, 1919, at the hour of 10:45 A. M., and completed loading on October 3, 1919, at the hour of 3:30 P. M.; that said vessel left said Point Orient dock on October 4, 1919, at the hour of 9:20 A. M.

It is further STIPULATED and AGREED that this stipulation may serve in the place of the new proofs which, by order of the Honorable, the above-entitled court, the appellant was heretofore and on or about the 25th day of October, 1921, granted leave to make on this appeal, and that this stipulation may be printed and furnished by the Clerk in the same manner as new testimony under Rule 10 of Rules in Admiralty of the Honorable, the above-

entitled court, and that the same may be considered upon this appeal in the same manner and with the same effect, and in every respect exactly, as if the facts herein stipulated to had been testified to and elicited by deposition pursuant to the order of the above-entitled court made and entered in the above-entitled cause on or about the 25th day of October, 1921, and pursuant to Rule 9 of Rules in Admiralty of the said court.

Dated: November 15, 1921.

PILLSBURY, MADISON & SUTRO,

Proctors for Appellant.

WILLIAM DENMAN,

Proctor for Appellees.

[Endorsed]: No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Vacuum Oil Co., Proprietary, Ltd., Appellant, vs. H. W. Westphal, et al., Appellees. Stipulation Regarding New Proofs on Appeal. Filed Nov. 22, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

**Libelant's Exhibit No. 1.**

ORIGINAL.

F. S. 39—S 115

[Stamped:] Henry Kirchmann, Jr., Ship & Freight Broker, San Francisco, Cal.

H. A. SAFFER, Agent,

VACUUM OIL CO., PROPRIETARY, LTD.

No. 61 Broadway,

New York.

Sail  
To  
Australia

—  
New Zealand.

THIS CHARTER PARTY, made in the City of San Francisco, the 19th day of November 1918, Between SANDERS & KIRCHMANN, INC., Agent for Owners of the American Schooner "COMMERCE" of San Francisco, of the burthen of 621 net tons, or thereabouts, register measurement, now enroute to San Francisco with cargo of copra and on completion of discharge is chartered for cargo of Petroleum Products to New Zealand, thence proceeds to Fiji Islands to load cargo of copra for San Francisco, of the first part, and

H. A. SAFFER, Agent of the VACUUM OIL COMPANY PROPRIETARY, LTD., of the second part: WITNESSETH, that the said party of the first part agrees on the freighting and chartering of the whole of the said vessel, (with the exception of

the cabin and necessary room for the crew and storage of provisions, sails, and cables), unto the party of the second part, for a voyage from the port of San Francisco, including Point Orient and Point San Pablo, to Auckland, Wellington, Lyttleton, or Dunedin (one port only at Charterer's option), on the terms following:

1. The said vessel shall be tight, staunch, strong and in every way fitted for such a voyage, including proper dunnage, and shall receive on board for the aforesaid voyage a full cargo of PETROLEUM Products in customary low top cases of ten American gallons each, which the said party of the second part doth engage to provide and furnish; and a full on deck cargo of sawn lumber and/or barrel goods.

2. The said party of the second part agrees to pay to said party of the first part, or Agents, for the use of said vessel during the voyage aforesaid: (\$27.50) Twenty-seven Dollars and Fifty Cents per thousand feet B. M. on lumber laden on deck, and (\$1.37½) One Dollar Thirty-seven and One-half Cents, United States Gold, on each and every case loaded, whether full part full, or empty.

4. No goods or merchandise, except from the said party of the second part, or his Agents shall be laden on board the vessel without his written consent.

5. The vessel shall haul to such loading berth or berths (where she can lie always afloat, in safety), as may be designated by the Charterer, or his Agents, but, if ordered to haul more than once, the Charterer shall pay all subsequent towage.

6. It is agreed that the lay days for loading shall be (if not sooner despatched) 5,000 cases per weather working day for case oil and 75,000 feet per day for lumber, commencing when the vessel is ready to receive cargo, with one working day additional to clear at the Custom House. Vessel to receive cargo on clearing day, if required by Charterer, or his Agents, free of claim for demurrage. Cargo to be discharged with customary despatch, and to be delivered, at the port or ports of discharge free of vessel's tackles, where she can lie afloat and in safety but at rate of not less than 2500 cases per weather working day for case oil and 75,000 feet per day for lumber. It is understood, if vessel's gear will not handle thus rapidly, that despatch to be as fast as vessel can handle.

7. The lay days for loading are to commence when vessel is ready to load and if the vessel is **not** ready to load by two o'clock, P. M., on the 130 day after sailing for San Francisco, the Charterer shall have the option of cancelling or maintaining this charter, to be decided when vessel gives notice of readiness to load, if direct from Sydney or a New Zealand port, or the 110th day if direct from South Sea Islands.

8. For each and every day's detention by default of the said Charterer or his Agents, demurrage shall be paid by the Charterer, or his Agents, to the Owners, or their Agents; demurrage being (\$200.00) Two Hundred Dollars per day.

9. The cargo to be received and delivered along-

side, at loading berth or berths, within reach of the vessel's tackles where she can lie afloat and in safety.

10. The vessel to be loaded under the usual stowage inspection, if required by the Charterer, free of charge to the vessel for such inspection.

11. The vessel's stevedores for loading and the stevedores for discharging to be appointed by the Master of the vessel.

12. The Master to sign Bills of Lading for the cargo without prejudice to this Charter Party. The Master to call at the Shipper's office to sign Bills of Lading when required.

13. The Charterer's responsibility shall cease when the cargo is all on board and Bills of Lading signed, but the Master and Owners shall have an absolute lien on the cargo for the freight, dead freight or demurrage.

17. General Average, if any, to be adjusted according to York-Antwerp Rules of 1890, and as to matters not therein provided for, according to the usages and customs of the port of San Francisco.

17-A. Charterers have the privilege of shipping Petroleum and/or *it* products in barrels and/or drums (on deck) and odd size cases (under deck) the rate of freight per cubic foot on such cargo to be half of the rate of freight per case expressed in Clause 2.

17-B. All freight shall be prepaid on signing Bills of Lading and shall be considered earned vessel lost or not lost.

17-C. This Charter Party is subject to governmental permission to load and Charterers securing export licenses and is to be cancelled if for any reason loading of the cargo is prevented by act of any government.

17-D. Charterers to pay Ship Broker  $2\frac{1}{2}\%$  on gross amount of this charter.

19. It is also mutually agreed that this Charter Party shall be subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States of America, approved on the 13th day of February, 1893, and entitled "An Act relating to navigation of vessels, etc."; and Bills of Lading to be issued in conformity with such Act.

20. A commission of  $2\frac{1}{2}\%$  per cent. upon the gross amount of this Charter is due to Charterer by the vessel and Owners, upon payment of freight under this Charter Party.

21. To the true and faithful performance of all and every of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, and also the vessel, freight, tackle and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of the estimated freight under the within Charter.

IN WITNESS WHEREOF, we have hereunto set our hands, the day and year first above written.

Signed in presence of—

A. E. WOLFF.

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN.

VACUUM OIL COMPANY PROP. LTD.

H. A. SAFFER, Agent.

[Endorsed]: United States District Court. No. 16701. San Mateo R. & S. Co. vs. Vacuum Oil Co. etc. Lib. Exhibit No. 1. Filed Apr. 21, 1921. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 13, 1921. F. D. Monckton, Clerk.

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**Libelant's Exhibit No. 2.**

FWL-R

Office of the Collector

District No. 28

Address all Communications  
for this Office to the Collector

TREASURY DEPARTMENT

United States Custom Service

San Francisco, Cal.

April 20, 1921.

I HEREBY CERTIFY that, according to the records of this office, the following were the sole owners of the Schooner COMMERCE (127464) of this port on November 19, 1918:



“Sanders & Kirchmann (Inc.)” of San Francisco, owning 7/64, together with “Schooner Owners Company” (Inc.) 31/64, Diederick Von der Mehden 2/64, Carl Von der Mehden 2/64, Henry Frische 2/64, C. Nonnenmann 2/64, Louisa Schnabel 1/128, Marie Bette 1/128, Fred H. Klopper 1/64, “Tillman & Bendel” (Inc.) 1/64, Henry Wellmann 2/64, Betty Von Cleve 1/64, Lillie Bruckmann 2/64, Robert Elder 2/64, Chas. F. Lurmann 1/64, Clara Oliver 1/64, “San Mateo Realty and Security Company” (Inc.) 4/64, and Christian Zeuthen of said place and State, 2/64;

that no transfers except as follows have been recorded up to and including Oct. 22, 1919, viz.:

“San Mateo Realty and Security Company” (Inc.) to H. W. Westphal of San Francisco, four sixty-fourths, dated April 18, 1919, and recorded April 29, 1919, at 1:30 P. M. in Book 63 R. V., page 76; and “Tillmann & Bendel” (Inc.) to Thusnelda Wilkens of San Francisco, one sixty-fourth, dated Oct. 21, 1919, and recorded Oct. 22, 1919, at 12 M. in Book 65 R. V., page 17; and that there is no mortgage or lien on record against said vessel in this office.

Given under my hand and seal of office this 20th day of April, 1921, at 2:30 P. M.

M. LYNCH,

Acting Deputy Collector of Customs.

Fee \$1.

M. L.

[Stamped]: U. S. Customs Service, San Francisco.  
Paid April 21, 1921. District 28.

[Stamped]: U. S. Customs Service, San Francisco.  
16701. San Mateo R. & S. Co. vs. Vacuum Oil Co.  
Lib. Exhibit No. 2. Filed Apr. 21, 1921. Walter  
B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3785. United States Circuit Court of Appeals  
for the Ninth Circuit. Filed Oct. 13, 1921. F. D.  
Monckton, Clerk.  
F. S. 39—S 115

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**Libelant's Exhibit No. 14.**

C. A. BLUMER Agent,

VACUUM OIL CO., PROPRIETARY, LTD.

San Francisco.

Sail  
to  
Australia

---

New Zealand.

THIS CHARTER PARTY, made in the City of  
San Francisco, the 1st day of November 1919, be-  
tween SANDERS & KIRCHMANN, INC., Agents  
for Owners of the American Schooner "COM-  
MERCE" of San Francisco, of the burthen of 621  
net tons, or thereabouts, register measurement, now  
at Point Orient, of the first part, and

C. A. BLUMER, Agent of the VACUUM OIL  
COMPANY PROPRIETARY, LTD., of the second  
part: WITNESSETH, that the said party of the  
first part agrees on the freighting and chartering of

the whole of the said vessel, (with the exception of the cabin and necessary room for the crew and storage of provisions, sails, and cables), unto the party of the second part, for a voyage from the port of San Francisco, including Point Orient and Point San Pablo, to Auckland, Wellington, Lyttleton or Dunedin (one port only at Charterer's option), on the terms following:

1. The said vessel shall be tight, staunch, strong and in every way fitted for such a voyage, including proper dunnage, and shall receive on board for the aforesaid voyage a full cargo of PETROLEUM Products in customary low top cases of ten American gallons each, which the said party of the second part doth engage to provide and furnish; and a full on deck cargo of sawn lumber and/or barrel goods.

2. The said party of the second part agrees to pay to said party of the first part, or Agents, for the use of said vessel during the voyage aforesaid: (\$15.00) Fifteen Dollars per thousand feet B. M. on lumber laden on deck, and (70c) Seventy Cents, United States Gold, on each and every case loaded, whether full part full, or empty.

4. No goods or merchandise, except from the said party of the second part, or his Agents shall be laden on board the vessel without his written consent.

5. The vessel shall haul to such loading berth or berths (where she can lie always afloat, in safety), as may be designated by the Charterer, or his Agents, but, if ordered to haul more than once, the Charterer shall pay all subsequent towage.

6. It is agreed that the lay days for loading shall be (if not sooner despatched) 5,000 cases per weather working day for case oil and 75,000 feet per day for lumber, commencing when the vessel is ready to receive cargo, with one working day additional to clear at the Custom House. Vessel to receive cargo on clearing day, if required by Charterer, or his Agents, free of claim for demurrage. Cargo to be discharged with customary despatch, and to be delivered, at the ports of discharge free of vessel's tackles, where she can lie afloat and in safety, but at rate of not less than 2500 cases per weather working day for case oil and 75,000 feet per day for lumber. It is understood, if vessel's gear will not handle thus rapidly, that despatch to be as fast as vessel can handle.

7. The lay days for loading are not to commence before Nov. 3d, 1919, except with the consent of the Charterer, or his Agents, and if the vessel is not ready to load by two o'clock, P. M., on Nov. 30th, 1919, the Charterer shall have the option of cancelling or maintaining this charter, to be decided when vessel is discharged.

8. For each and every day's detention by default of the said Charterer or his Agents, demurrage shall be paid by the Charterer or his Agents, to the Owners, or their Agents, demurrage being (\$200.00) Two Hundred Dollars per day.

9. The cargo to be received and delivered alongside, at loading berth or berths, within reach of the vessel's tackles, where she can lie afloat and in safety.

10. The vessel to be loaded under the usual stowage inspection, if required by the Charterer, free of charge to the vessel for such inspection.

11. The vessel's stevedores for loading; and the stevedores for discharging to be appointed by the Master of the vessel.

12. The Master to sign Bills of Lading for the cargo without prejudice to this Charter Party. The Master to call at the Shipper's office to sign Bills of Lading when required.

13. The Charterer's responsibility shall cease when the cargo is all on board and Bills of Lading signed, but the Master and Owners shall have an absolute lien on the cargo for the freight, dead freight or demurrage.

17. General Average, if any, to be adjusted according to York-Antwerp Rules of 1890, and as to matters not therein provided for, according to the usages and customs of the port of San Francisco.

17-A. Charterers have the privilege of shipping Petroleum and/or its products in barrels and/or drums (on deck) and odd size cases (under deck) the rate of freight per cubic foot on such cargo to be half of the rate of freight per case expressed in Clause 2.

17-B. All freight shall be prepaid on signing Bills of Lading and shall be considered earned vessel lost or not lost.

17-C. This Charter Party is subject to governmental permission to load and Charterers securing export licenses and is to be cancelled if for any rea-

son loading of the cargo is prevented by act of any government.

17-D. Charterers to pay Ship Broker  $2\frac{1}{2}\%$  on gross amount of this charter.

19. It is also mutually agreed that this Charter Party shall be subject to all the terms and provisions, of, and all the exemptions from liability contained in, the Act of Congress of the United States of America, approved on the 13th day of February, 1893, and entitled "An Act relating to navigation of vessels, etc."; and Bills of Lading to be issued in conformity with such Act.

20. A commission of  $2\frac{1}{2}$  per cent. upon the gross amount of this Charter is due to Charterer by the vessel and Owners, upon payment of freight under this Charter Party.

21. To the true and faithful performance of all and every of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, and also the vessel, freight, tackle and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of the estimated freight under the within Charter.

IN WITNESS WHEREOF, we have hereunto set our hands, the day and year first above written.

Signed in presence of—

---

SANDERS & KIRCHMANN, INC.

By H. KIRCHMANN,

Secretary.

C. A. BLUMER,

Agent for Vacuum Oil Co., Ltd.

[Endorsed]: United States District Court. No. 16701. S. M. R. & S. Co. vs. Vacuum Oil Co. Lib. Exhibit No. 14. Filed April 21, 1921. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 13, 1921. F. D. Monckton, Clerk.

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**Libelant's Exhibit No. 16.**

Sept. 16th, 1919.

Mr. C. A. Blumber,  
Mills Building,  
San Francisco.

Dear Sir:

Enclosed herewith you will find surveyor's report on the Schr. "COMMERCE."

Yours very truly,

SANDERS & KIRCHMANN, INC.

By \_\_\_\_\_,  
Secretary.

No. —

BOARD OF MARINE UNDERWRITERS OF  
SAN FRANCISCO  
SURVEYOR'S REPORT.

Flag. Rig. Name—4 mast Schr. "Commerce."  
Gross Tons 658.

Master's Name—C. Anderson.

Built in Year 1900 at Alameda, Cal.

Builder's Name—Hay & Wright.

Material—Yellow Fir. Fastening—G. I. F. and treenails.

When Caulked Bottom—Sept/19. Topsides—Sept. 19. Deck—1918.

Present Condition of Caulking—of: Topsides—Good. Deck—Good.

When Docked—Sept/19. Bottom when Painted—Same time.

When Metalled ———. Present Condition of Metal ———.

Owned by Sanders & Kirchmann. Hails from San Francisco.

Anchors—Bowers 2. Stream——— Kedge 1.

Cables—Number 2—1½". Total Length—180 fathoms.

Present Condition Spars and Rigging—Good. Spare Spars—1.

Pumps—Present Condition—Good. Has gas, steam and hand pumps. Spare Sails—1 suit.

Donkey Engine—Good. Connected with Pumps—Yes.

Classed in———. Register———.

Ballast—Amount, Kind and Draft———.

To Load—Case Oil for Dunedin, N. Z.

#### GENERAL REMARKS.

Have held survey of this vessel afloat and on drydock and find her to be in good condition throughout. Whilst on drydock bottom and topsides have been caulked and seams around hatch coamings and other minor repairs incident to seaworthiness. Vessel in



every respect fit to carry dry and perishable cargo upon the intended voyage.

Surveyed at Alameda, 15th day of Sept., 1919.

By request of Owners.

CECIL BROWN, Surveyor.

[Endorsed]: United States District Court. No. 16701. S. M. R. & S. Co. vs. Vacuum Oil Co. Lib. Exhibit No. 16. Filed Apr. 22, 1921. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 13, 1921. F. D. Monckton, Clerk.

**Libellant's Exhibit No. 17.**

J. J. MOORE & CO., Inc.  
Shipping Merchants  
Importers and Exporters  
San Francisco  
AUSTRALIAN  
DISPATCH LINE  
UNDER DECK

ON DECK

No Mark

1533 pes      48,813 ft.

TOTALS

1533 pes.      48,813 ft.

[Stamped:] Freight Pre-  
paid.

FREIGHT

48,813 ft. at \$15.00 per M.

£      \$732.20.

SHIPPED in good order and condition, by

J. J. MOORE & CO., Inc.

on board the Am. Schooner called the "COM-  
MERCE" whereof Anderson is Master, now lying  
at the Port of San Francisco and bound for Dunedin,  
N. Z., to say :

UNDER DECK

ON DECK (AT OWNER'S RISK)

No Mark

One thousand five hundred thirty-three (1533)  
pieces Green Rough Clear Redwood said to contain  
forty-eight thousand eight hundred thirteen (48,813)  
feet B. M.

(Five (5) pieces in dispute, if on board to be de-  
livered).

[Stamped:] All on board to be delivered.

being marked and numbered as in the margin, and  
are to be delivered in like order and condition at  
the Port of Dunedin, N. Z. (the act of God, perils  
of the sea, fire, barratry of the master and crew,  
enemies, pirates, thieves, arrest or restraint of  
princes, rulers or people, collision, stranding, and  
other accidents of navigation excepted, even when  
occasioned by the negligence, default, or error in  
judgment of the pilot, master, mariners, or other  
servants of the shipowners) unto ORDER . . . . .  
or to its or their assigns, they paying freight for the  
said Lumber, as per margin, with average, if any, as  
per York-Antwerp Rules, 1890.

IN WITNESS WHEREOF, the Master or Purser  
of the said vessel hath affirmed to three Bills of Lad-  
ding, all of this tenor and date, one of which being  
accomplished, the others to stand void.

Dated in San Francisco, the 22d day of November,  
1919.

C. A., Master.

[Stamped across face:] Copy—Non-negotiable.

J. J. MOORE & CO., Inc.  
Shipping Merchants  
Importers and Exporters  
San Francisco  
AUSTRALIAN  
DISPATCH LINE

UNDER DECK

ON DECK

668 pcs.      221,459 ft.

TOTALS

668 pcs.      221,459 ft.

[Stamped:] Freight Pre-  
paid.

FREIGHT

221,459 ft. at \$15.00 per M.

£      \$3321.89

SHIPPED in good order and condition, by

J. J. MOORE & CO., Inc.

on board the Am. Schooner called the "COM-  
MERCE" whereof Anderson is Master, now lying  
at the Port of San Francisco and bound for Dunedin,  
N. Z., to say:

UNDER DECK

ON DECK (AT OWNER'S RISK)

No Mark

Six hundred sixty-eight (668) pieces Rough Mer-  
chantable Douglas Fir lumber said to contain Two  
hundred twenty-one thousand four hundred fifty-  
nine (221,459) feet B. M.

[Stamped:] All on board to be delivered.  
being marked and numbered as in the margin, and  
are to be delivered in like order and condition at  
the Port of Dunedin, N. Z. (the act of God, perils  
of the sea, fire, barratry of the master and crew,  
enemies, pirates, thieves, arrest or restraint of  
princes, rulers or people, collision, stranding, and  
other accidents of navigation excepted, even when  
occasioned by the negligence, default, or error in  
judgment of the pilot, master, mariners, or other  
servants of the shipowners) unto ORDER . . . . .  
or to its or their assigns, they paying freight for the  
said Lumber as per margin, with average, if any, as  
per York-Antwerp Rules, 1890.

IN WITNESS WHEREOF, the Master or Purser  
of the said vessel hath affirmed to three Bills of Lad-  
ing, all of this tenor and date, one of which being  
accomplished, the others to stand void.

Dated in San Francisco, the 22d day of November,  
1919.

C. A., Master.

[Stamped across face:] Copy—Non-negotiable.

SHIPPED in good order and condition, by Vacuum Oil Co., Pty., Ltd., on board the Am. Schr. called the "COMMERCE," whereof Capt. Anderson is master, now lying at the Port of San Francisco and bound for Dunedin, New Zealand. To say

5000 Cases 2/4s Kalif Motor Spirit  
 16574 Cases 2/5s Laurel

21574

COPY

NON-NEGOTIABLE

being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of Dunedin, New Zealand (the dangers of the seas only excepted) unto ORDER NOTIFY—Vacuum Oil Co., Pty., Ltd., or to their assigns he or they paying freight for the said Cases Seventy cents (\$.70) per case delivered and all other conditions and exceptions as per Charter Party dated Nov. 1st, 1919, 1890. In witness whereof the master or purser of the said vessel hath affirmed to Four Bills of Lading all of this tenor

ALL CLAIMS FOR SHORT DELIVERY TO BE PAID AT DISCHARGING PORT BEFORE VESSEL SAILS.

FREIGHT PREPAID

21574 cases at .70¢ each.....\$15101.80  
 Less 2½% Comm: Due Charterer ..... 377.55  
\$14724.25

and date, one of which being accomplished, the others to stand void.

It is Mutually Agreed, that this shipment is subject to all terms and provisions of and to all the exemptions from liability contained in the Act of Congress of the United States relating to Navigation &c., approved on the 13th day of February, 1893.

Dated in San Francisco, the 15th day of November, 1919.

All Conditions and Exceptions of Charter Party are to be Considered as Embodied in This Bill of Lading.

Gauge and Contents, Quality and Value unknown and not accountable for leakage, or rust. Freight payable in Cash without discount on each and every Case delivered, full, part-full or empty.

C. A., Master.

[Endorsed]: United States District Court. No. 16701. S. M. R. & S. Co. vs. Vacuum Oil Co. Lib. Exhibit No. 17. Filed Apr. 22, 1921. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 13, 1921. F. D. Monckton, Clerk.

**Libelant's Exhibit No. 18.**

MEMORANDUM FOR ASSISTANCE OF THE COURT.

DIFFERENCE BETWEEN FREIGHT UNDER CHARTER-PARTY DATED NOV. 19, 1918, AND CHARTER-PARTY DATED NOVEMBER 1, 1919:

To freight earned if Schooner "COMMERCE" loaded under Charter-party dated Nov. 19th, 1918:

21,574 cs. oil @ \$1.37½ per case . . . . . \$29,664.25  
 270,272 ft. lumber @ \$27.50 per M. . . . . 7,432.48

\$37,096.73

Less charter commission 2½% . . . . . 927.42 \$36,169.31

To freight on Case Oil cargo shipped per Schr. "COMMERCE" Charter-party dated Nov. 1, 1919:

21,574 cs. oil @ 70¢ per case . . . . . \$15,101.80

To Freight on 270,272 ft. lumber @ \$15.00 . . . . . 4,054.09

\$19,155.89

Less charter commission 2½% . . . . . 478.90 \$18,676.99

NET DIFFERENCE IN FREIGHT

DUE OWNERS . . . . . \$17,492.32

[Endorsed]: United States District Court. No. 16701. S. M. R. & S. Co. vs. Vacuum Oil Co. Lib. Exhibit No. 18. Filed Apr. 22, 1921. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 13, 1921. F. D. Monckton, Clerk.

**Libelant's Exhibit No. 19.**

CHARTERS MADE BETWEEN VACUUM OIL CO. AND SANDERS & KIRCHMANN,  
INC.

Schooner	Charter-party	dated	San	Francisco,	
"EXPANSION"					Jan. 30, 1918.
"COMMERCE"	"	"	"	"	Oct. 14, 1918.
"LUZON"	"	"	"	"	Sept. 3, 1918.
"SAMAR"	"	"	"	"	Nov. 2, 1918.
"	"	"	"	"	" 19, 1918.
"FORESTER"	"	"	"	"	" 19, 1918.
"	"	"	"	"	" 13, 1918.
"PHILIPPINE"	"	"	"	"	" 19, 1918.
"	"	"	"	"	" 13, 1918.
"COMMERCE (Cancelled)	"	"	"	"	" 19, 1918.
"	"	"	"	"	" 1, 1919.
"LUZON"	"	"	"	"	" 19, 1918.

[Endorsed]: United States District Court. No. 16701. S. M. R. & S. Co. vs. Vacuum Oil Co Lib. Exhibit No. 19. Filed Apr. 22, 1921. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. No. 3785. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 13, 1921. F. D. Monckton, Clerk.

